
Domestic Relations & Families

(Amended as of 3/25/11)

CHICKASAW NATION CODE

TITLE 6

"6. DOMESTIC RELATIONS AND FAMILIES"

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SECTION 6-101.1 **TITLE.**

This Act shall be known as the "Domestic Relations Act of 2002" ("Act"). (PR19-018, 5/17/02)

SECTION 6-101.2 **JURISDICTION.**

Territorial jurisdiction, subject matter jurisdiction and personal jurisdiction shall be in accordance with Title 5, Chapter 2, Article A of the Chickasaw Nation Code.

SECTION 6-101.3 **AREAS OF JURISDICTION.**

A. General Jurisdiction

1. The Court shall have jurisdiction over all issues within this title wherein a Chickasaw Indian is the defendant regardless of the domicile of such person.

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2. The Court shall have jurisdiction over all issues within this title wherein the defendant is an Indian and has resided within the governmental boundaries described with the Constitution of the Chickasaw Nation for ninety (90) days preceding the filing of this action.

3. The Court shall have jurisdiction over all issues within this title wherein non-Indian defendants consent in writing to the jurisdiction of the Court.

B. Continuing Jurisdiction

1. Once the Court has determined that jurisdiction exists in regard to issues addressed by this title, the Court may retain jurisdiction over all issues so long as outstanding issues remain between the parties.

2. Consents, once given, may not be withdrawn. A person requesting affirmative relief in writing is deemed to have consented to the jurisdiction of the Court whether plaintiff or defendant.

3. Residency is only an issue for jurisdiction at the initiation of a case. Once jurisdiction attaches, jurisdiction remains.

4. A Chickasaw Indian may not avoid jurisdiction after the same attaches by subsequent actions of renouncing tribal affiliation.

C. Court Exercise of Jurisdiction

At any time a Judge of this Court determines that the exercise of jurisdiction under this title is not in the best interest of the Chickasaw Nation, the Judge may decline to exercise jurisdiction if one or more of the following findings is specifically made:

a. The orders sought by the plaintiff or defendant will be impossible for the Court to enforce.

b. Another jurisdiction is available and provides a more convenient forum for the parties.

c. Another jurisdiction is attempting to exercise authority over the issues addressed and comity should be extended to allow such court to act.

d. The Court is without financial means to adequately address the case.

D. Jurisdiction Vesting

Jurisdiction is determined to have vested at time of filing an action provided that:

- a. Written consents required by a defendant relate back to date of filing if given after filing. Nothing prevents consent being given in advance of filing.
- b. Service of process must be accomplished within six (6) months of filing and must meet due process standards of the United States federal government or the case is deemed dismissed for lack of service.

SECTION 6-101.4 APPLICABLE LAW.

Applicable law shall be in accordance with Title 5, Chapter 2, Article A of the Chickasaw Nation Code.

SECTION 6-101.5 ACTIONS THAT MAY BE BROUGHT; REMEDIES.

A. Actions that may be brought under this Act are actions for divorce, legal separation, annulment or parentage. Appropriate remedies regarding divorce, annulment, separate maintenance and the division of community property and debt shall be available at the Court's discretion as provided in this Act.

B. After parties have established jurisdiction for any purpose, the Court shall have jurisdiction to settle all claims made between the parties under the equity clean up rule.

SECTION 6-101.6 DEFINITION OF MARRIAGE, COMMON LAW MARRIAGE.

A. "Marriage" means a personal relation arising out of a civil contract between members of the opposite sex to which the consent of parties legally competent of contracting and of entering into it is necessary, and the Marriage relation shall be entered into, maintained or abrogated as provided by law.

B. "Common Law Marriage" means a personal relationship arising out of tribal customs and traditions or from common law of a tribe, state or nation wherein the parties entered Marriage.

SECTION 6-101.7

CONSANGUINITY.

Marriages between ancestors and descendants of any degree, of a stepfather with a stepdaughter, stepmother with stepson, between uncles and nieces, aunts and nephews, except in cases where such relationship is only by Marriage, between brothers and sisters of the half as well as the whole blood, and first cousins are declared to be incestuous, illegal and void, and are expressly prohibited. Provided, that any Marriage of first cousins performed in a state authorizing such Marriages, which is otherwise legal, is hereby recognized as valid and binding in the Chickasaw Nation as of the date of such Marriage.

SECTION 6-101.8

PERSONS HAVING CAPACITY TO MARRY.

Any unmarried person of the age of eighteen (18) years or upwards and not otherwise disqualified is capable of contracting and consenting to Marriage with a person of the opposite sex but no person under the age of eighteen (18) years shall enter into the Marriage relation except upon the consent and authority expressly given by the parent or guardian of such underage applicant. Provided, however, every person under the age of sixteen (16) years is expressly forbidden and prohibited from entering into the Marriage relation. Provided, that this section shall not be construed to prevent the Court from recognizing the Marriage of persons under the ages herein mentioned, in settlement of suits for seduction or paternity; and the Court may also recognize the Marriage of persons under the ages herein mentioned when the unmarried female is pregnant, or has given birth to a child of the parties, whether or not any suits for seduction or paternity have been brought; provided that the Court shall recognize the Marriage of any male under the age of sixteen (16) or any female under the age of sixteen (16) when the unmarried female is pregnant unless at least one parent of each minor, or the guardian or custodian of such child, is present before the Court and has an opportunity to present evidence of such Marriage. No Marriage may be recognized when such Marriage would be incestuous under this Act.

SECTION 6-101.9

**MARRIAGE BETWEEN PERSONS OF SAME GENDER
NOT RECOGNIZED.**

A. A Marriage between persons of the same gender performed in any jurisdiction shall not be recognized as valid and binding in the Chickasaw Nation as of the date of the Marriage.

B. No Marriage will be recognized between persons of the same sex; however, nothing in this title prohibits members of the same sex from entering written contracts one with the other.

SECTION 6-101.10

GROUND FOR DIVORCE.

The Court may grant a divorce on the grounds of irreconcilable differences between the parties.

SECTION 6-101.11

PETITION; SUMMONS.

The petition must be verified as true.

SECTION 6-101.12

NOTICE OF PENDENCY CONTINGENT UPON SERVICE.

Notice of the pendency of an action shall have no effect unless service of process is made upon defendant(s).

SECTION 6-101.13

SPECIAL NOTICE FOR ACTIONS PENDING IN OTHER COURTS.

No action pending in either state or federal court, or the court of any other Indian nation, shall constitute notice within the jurisdiction of the Chickasaw Nation until a notice of pendency of the action, together with a certified copy of the entire case is filed of record in the office of the Court Clerk.

SECTION 6-101.14

PLEADINGS.

A. Pleadings shall be summary and not specific in nature. The Court shall allow amendments and supplementation of pleadings, provided the same allows for notice and discovery prior to trial. If a trial date is set, and less than ten (10) days remains to trial, leave must be obtained from the Court prior to filing.

B. Every pleading shall contain a caption setting forth the name of the Court, the title of the action, the file number, and a designation of the type of pleading.

C. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, or motions, or briefs. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

D. Statements in a pleading, or motion, or brief may be adopted by reference in a different part of the same pleading or in another pleading or in any motion or brief. A copy of

any written instrument which is an exhibit to a pleading, or a motion, or a brief is a part thereof for all purposes.

SECTION 6-101.15

SIGNING OF PLEADINGS.

A. Every pleading of a party represented by a member of the Chickasaw Bar Association shall be signed by such member in his individual name, whose address and telephone number shall be stated. A party who is not represented by a member of the Chickasaw Bar Association shall sign his pleading and his address and telephone number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit.

B. The signature of a member of the Chickasaw Bar Association constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this Section it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this Section a member of the Chickasaw Bar Association may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

C. Failure of a *pro se* party or member of the Chickasaw Bar Association to provide current and updated addresses shall not be grounds for any request to vacate for lack of notice. Such persons have an affirmative duty to file notice of address changes with the Court.

SECTION 6-101.16

**DEFENSE AND OBJECTIONS; WHEN AND HOW
PRESENTED; BY PLEADINGS OR MOTIONS; MOTION
FOR JUDGMENT ON THE PLEADINGS.**

A. When Presented.

1. A defendant shall serve his answer within twenty (20) days after the service of summons and petition upon him or a different time is prescribed in the order of the Court or under a statute of the Chickasaw Nation.

2. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty (20) days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty (20) days after service of the answer, or, if a reply is ordered by the Court, within twenty (20) days after service of the order unless the order otherwise directs. The service of a motion permitted under this Section alters these periods of time as follows, unless a different time is fixed by

order of the Court: 1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Court's action; 2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within ten (10) days after the services of the more definite statement.

3. Within the time in which an answer may be served, a defendant may file any entry of appearance and reserve twenty (20) additional days to answer or otherwise defend.

4. No action or requirement to appear against any governmental entity is authorized by this title.

B. How Presented.

1. Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- a. lack of jurisdiction over the subject matter;
- b. lack of jurisdiction over the person;
- c. improper venue or *forum non conveniens*;
- d. insufficiency of process;
- e. insufficiency of service of process;
- f. failure to state a claim upon which relief can be granted;
- g. failure to join a party;
- h. another action pending between the same parties for the same claim;
- i. lack of capacity of a party to be sued; and
- j. lack of capacity of a party to sue.

2. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one

or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or in fact to that claim for relief. If, on a motion asserting the defense numbered f. above to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

SECTION 6-101.17 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.18 **LOST PLEADINGS.**

If a pleading is lost or withheld by any person, the Court may allow a copy thereof to be substituted. (PR19-018, 5/17/02)

SECTION 6-101.19 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.20 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.21 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.22 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.23 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.24 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.25 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.26 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.27 **SUMMONS, TIME LIMIT FOR SERVICE.**

A. If service of process is not made upon a defendant within one hundred twenty (120) days after the filing of the petition and the plaintiff cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the Court's own initiative with notice to the plaintiff or upon motion.

B. If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the petition, the action shall be deemed to have been dismissed without prejudice as to that defendant.

SECTION 6-101.28 **SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.**

A. Except as otherwise provided in this Act, every order required by its terms to be served, every pleading subsequent to the original petition unless the Court otherwise orders, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except the pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons.

B. Whenever service is required or permitted to be made upon a party represented by a member of the Chickasaw Bar Association the service shall be made upon the attorney unless service upon the party himself is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to him or mailing it to him at his last known address or, if no address is known, by leaving it with the Court Clerk who shall mail a copy thereof to the party's last address of record. Service by mail is complete upon mailing. Delivery of a copy within this Section means:

1. handing it to the attorney or to the party;

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2. leaving it at his office with his clerk or other person in charge thereof;
3. if there is no one in charge, leaving it in a conspicuous place therein; ~~or~~
4. if the office is closed or the person to be served has no office, leaving it at his dwelling, house, or usual place of abode with some person fifteen (15) years of age or older then residing therein; or
5. by confirmed facsimile transmission.

C. All papers after the petition required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter. Discovery materials need not be filed except by order of the Court, for use in the proceeding, or to enforce or resist such discovery.

D. The filing of pleadings and other papers with the Court as required by this Act shall be made by filing them with the Court Clerk except that the Judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the Court Clerk.

SECTION 6-101.29

COMPUTATION AND ENLARGEMENT OF TIME.

A. In computing any period of time prescribed or allowed by this Act, by order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be include, unless it is a Saturday, a Sunday, or a Legal Holiday, or any other day when the Court Clerk does not remain open for public business until 4:00 p.m. in which case the period runs until the end of the next day which is not a Saturday, a Sunday, or a Legal Holiday or any other day when the office of the Court Clerk does remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than or equal to seven (7) days, intermediate Saturdays, Sundays, and legal holidays or any other day when the office of the Court Clerk or the Court does not remain open for public business until 4:00 p.m. shall be excluded in the computation. As used in this Section and in the provisions relating to the Court, "Legal Holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Piomingo Day (Federally recognized holiday known as Columbus Day), Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States or by the Governor of the Chickasaw Nation.

B. When by this Act or by a notice given thereunder or by order of the Court an act is required or allowed to be done at or within a specified time, the Court for cause shown any at any time in its discretion may:

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1. with or without motion or notice, order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order; or

2. upon motion made after the expiration of the specified time period permit the act to be done where the failure to act was the result of excusable neglect.

C. A written motion, a motion other than one (1) which may be heard *ex parte*, and a notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by this Act or by order of the Court. Such an order may for cause shown be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in this Act, opposing affidavits may be served not later than one (1) day before the hearing, unless the Court permits them to be served at some other time.

D. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

SECTION 6-101.30 **LEGAL NEWSPAPERS.**

All newspapers regularly published within the Chickasaw Nation at least once each week for a period of two (2) years prior to the date of publication of a notice shall be legal newspapers qualifying for the publication of any notice required to be published by this Act.

SECTION 6-101.31 **ANSWER MAY ALLEGE CAUSE; NEW MATTERS VERIFIED BY AFFIDAVIT.**

The defendant, in his or her answer, may allege a cause for a divorce against the plaintiff, and may have the same relief thereupon as he or she would be entitled to for a like cause if he or she were plaintiff. When new matter is set up in the answer, it shall be verified as to such new matter by the affidavit of the defendant.

SECTION 6-101.32 **PETITION FOR DIVORCE TO ALLEGE CAUSES FOLLOWING LANGUAGE OF STATUTE WITHOUT STATEMENT OF FACTS; BILL OF PARTICULARS.**

In all actions for divorce or for legal separation, the petition or cross petition shall allege the causes relied upon as nearly as possible in the language of the statute and without detailed statement of facts. If the opposing party desires a statement of the facts relied upon, the same

shall be furnished to him by the petitioner or cross petitioner in a bill of particulars. A copy of this bill of particulars shall be furnished to the Court and shall constitute the allegations of fact on behalf of the party filing such bill, upon which such action is to be tried. The statements therein shall be regarded as being denied by the adverse party, except as they may be admitted. The bill of particulars shall not be filed with the Court Clerk nor become a part of the records of the Court, but if the action be appealed, and the question sought to be reviewed relates to the facts set forth in the bill of particulars, it shall be embodied in the original record or case made for the Chickasaw Supreme Court.

SECTION 6-101.33

**DIVORCE, SEPARATE MAINTENANCE AND
ANNULMENT CASES; DELAYED FINAL ORDERS;
WAIVERS; EXCEPTIONS.**

A. No divorce, separate maintenance or annulment case shall be heard on its merits until the petition shall have been on file for at least ten (10) days if there are no minor children of the parties or at least ninety (90) days if there are minor children of the parties, except in the case of an emergency duly shown by application setting forth good cause, in the opinion of the Court, for an earlier hearing or upon a joint application by both parties after both parties have voluntarily participated in marital or family counseling and the Court finds reconciliation is unlikely.

B. All entries of appearance and waivers must be in writing, must be duly signed and witnessed or acknowledged at least one (1) day after the filing of the petition, and must be filed in the action. When an entry of appearance and waiver is filed as provided herein, the Court shall not grant greater relief than is requested in the petition unless the defendant consents in a writing filed in the action.

C. After a petition has been filed in an action for divorce where there are minor children involved, the Court may make any such order concerning property, children, support and expenses of the suit as provided for in Section 6-101.44 of this Title 6, to be enforced during the pendency of the action, as may be right and proper.”
(PR21-002, 11/21/03)

SECTION 6-101.34

RESERVED.

(PR19-018, 5/17/02)

SECTION 6-101.35

**PROCEEDING FOR DISPOSITION OF ACTIONS WITH
MINOR CHILDREN.**

A. In any proceeding of children where custody of minor children is contested by any

party, the Court may appoint an attorney at law as Guardian *ad litem* on the Court's motion or upon application of any party to appear for and represent the minor children. Expenses, costs, and attorney's fees for the Guardian *ad litem* may be allocated among the parties as determined by the Court.

B. When property, separate maintenance, or custody is at issue, the Court may refer the issue or issues to mediation.

SECTION 6-101.36 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.37 **BEST INTEREST OF CHILD CONSIDERED IN
AWARDING CUSTODY OR APPOINTING GUARDIAN;
JOINT CUSTODY; PLAN; MEDIATION.**

A. In awarding the custody of a minor unmarried child or in appointing a General Guardian for said child, the Court shall consider what appears to be in the best interests of the physical and mental and moral welfare of the child with due consideration of tribal custom.

B. The Court, pursuant to the provisions of Subsection A of this Section, may grant the care, custody, and control of a child to either parent, to the parents jointly or to an extended family member who intervenes. For the purposes of this Section, the terms joint custody and joint care, custody, and control mean the sharing by parents and/or extended family that is a party in the case in all or some of the aspects of physical and legal care, custody, and control of their children.

C. If either or both parents or extended family party have requested joint custody, said movant shall file with the Court their plans for the exercise of joint care, custody, and control of their child. The movant may submit a plan jointly or parties may submit separate plans. Any plan shall include but is not limited to provisions detailing the physical living arrangements for the child, child support obligations, medical and dental care for the child, school placement, and visitation rights.

D. The parties having joint custody of the child may modify the terms of the plan for joint care, custody, and control. The written modification to the plan shall be presented to the Court by the parties, and if the Court determines the modifications are in the best interests of the child, the Court shall approve the modifications and direct the same to be filed.

E. The Court also may modify the terms of the plan for joint care, custody, and control upon the request of any party. The Court shall not modify the plan unless the modifications are in the best interests of the child.

F. The Court may terminate a joint custody decree upon the request of a party or whenever the Court determines said decree is not in the best interests of the child.

G. Upon termination of a joint custody decree, the Court shall proceed and issue a modified decree for the care, custody, and control of the child as if no such joint custody decree had been made.

H. In the event of a dispute between the parties having joint custody of a child as to the interpretation of a provision of said plan, the Court may appoint an mediator to resolve said dispute.

I. If a party refuses to consent to mediation, the Court may terminate the joint custody decree.

SECTION 6-101.38

CUSTODY OF CHILD DURING SEPARATION WITHOUT DIVORCE.

If the parents of a minor unmarried child are separated without being divorced, the Judge of the Court, upon application of any party with legal interest including but not limited to the Chickasaw Nation, may issue any civil process necessary to inquire into the custody of said minor unmarried child. The Court may award the custody and support of said child in accordance with the best interests of the child, for such time and pursuant to such regulations as the case may require.

SECTION 6-101.39

DETERMINATION OF PATERNITY, CUSTODY AND CHILD SUPPORT.

Except as otherwise provided in this Act, in any action concerning the custody of a minor unmarried child and the determination of child support, the Court may determine if the parties to the action are the parents or extended family of the children. If the parties to the action are the parents of the children, the Court may determine which party should have custody of said children, may award child support and visitation to the parent to whom it awards custody, and may make any other appropriate orders, including payment of costs and attorney's fees.

SECTION 6-101.40

RESERVED.

(PR19-018, 5/17/02)

SECTION 6-101.41 **PRESUMPTION THAT MAN IS THE NATURAL FATHER.**

Except as otherwise provided in this Act, a man is presumed to be the natural father of a child for all intents and purposes if:

1. he and the child's natural mother are or have been married to each other and the child is born during the Marriage; or
2. statistical probability of paternity is established at ninety-eight percent (98%) or more by scientifically reliable genetic tests, including but not limited to blood tests.

SECTION 6-101.42 **PERSONS ENTITLED TO DISPUTE PRESUMPTION;
TIME LIMIT.**

A. The presumption of paternity created in this Act may be disputed only by the husband or wife, the putative father or their descendants.

B. If a child is born during the course of the Marriage and is reared by the husband and wife as a member of their family without disputing the child's legitimacy for a period of at least two (2) years, the presumption cannot be disputed by anyone except the father on the basis of fraud.

SECTION 6-101.43 **ESTABLISHMENT OF PATERNITY BY CHILD.**

An action to establish paternity shall be available to a child at any time.

SECTION 6-101.44 **ORDERS CONCERNING PROPERTY, CHILDREN,
SUPPORT AND EXPENSES.**

A. After a petition has been filed in an action for divorce or separate maintenance either party may request the Court to issue:

1. a temporary order:
 - a. regarding child custody, support or visitation;
 - b. regarding spousal maintenance;
 - c. regarding payment of debt;

- d. regarding possession of property;
 - e. regarding attorney fees;
 - f. restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring such person to notify the other party reasonably in advance of any proposed extraordinary expenditures made after the order is issued;
 - g. enjoining a party from molesting or disturbing the peace of the other party or of any child;
 - h. excluding a party from the family home or from the home of the other party;
 - i. enjoining a party from removing a child from the jurisdiction of the Court; and
 - j. providing other injunctive relief proper in the circumstances.
- i. All applications for temporary orders shall set forth the factual basis for the application and shall be verified by the party seeking relief. The application and a notice of hearing shall be served on the other party in any manner provided for in this Act.
 - ii. The Court shall not issue a temporary order until at least five (5) days' notice of hearing is given to the other party. After notice and hearing, the Court may issue a temporary order granting the relief as provided by this paragraph; and/or

2. a temporary restraining order:

If the Court finds on the basis of a verified application and testimony of witnesses that irreparable harm will result to the moving party or a child of a party if no order is issued before the adverse party or attorney for the adverse party can be heard in opposition, the Court may issue a temporary restraining order which shall become immediately effective and enforceable without requiring notice and opportunity to be heard to the other party. If a temporary restraining order is issued pursuant to this paragraph, the motion for a temporary order shall be set for hearing within ten (10) days.

B. Any temporary orders may be vacated or modified prior to or in conjunction with a final decree on a showing by either party of facts necessary for vacation or modification. Temporary orders terminate when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed. The Court may reserve jurisdiction to rule on an application for a contempt citation for a violation of a temporary order which is filed any time prior to the time the temporary order terminates.

C. Upon granting a decree of divorce or separate maintenance, the Court may require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances.

D. The Court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to Writs of *Habeas Corpus*, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys.

SECTION 6-101.45

POLICY FOR EQUAL ACCESS TO THE MINOR CHILDREN BY PARENTS.

It is the policy of the Chickasaw Nation to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their Marriage. To effectuate this policy, if requested by a parent, the Court shall provide substantially equal access to the minor children to both parents at a temporary order hearing, unless the Court finds that such shared parenting would be detrimental to such child. The burden of proof that such shared parenting would be detrimental to such child shall be upon the parent requesting sole custody and the reason for such determination shall be documented in the court record.

SECTION 6-101.46

INDIRECT CONTEMPT FOR DISOBEYING PROPERTY DIVISION ORDERS.

Any order pertaining to the division of property pursuant to a divorce or separate maintenance action, if willfully disobeyed, may be enforced as an indirect contempt of court.

SECTION 6-101.47

ORDER TO PROVIDE MINIMUM VISITATION FOR NONCUSTODIAL PARENT; VIOLATION OF ORDER.

A. Any order providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent shall provide a specified minimum amount of visitation between the noncustodial parent and the child unless the Court determines otherwise.

B. Except for good cause shown and when in the best interests of the child, the order shall encourage additional visitations of the noncustodial parent and the child and in addition encourage liberal telephone communications between the noncustodial parent and the child.

C. Except for good cause shown, when a noncustodial parent who is ordered to pay child support and who is awarded visitation rights fails to pay child support, the custodial parent shall not refuse to honor the noncustodial parent's visitation rights.

D. When a custodial parent refuses to honor a noncustodial parent's visitation rights, the noncustodial parent shall not fail to pay any ordered child support or alimony.

E. Violation of an order providing for the payment of child support or providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent may be prosecuted as indirect civil contempt or as otherwise deemed appropriate by the Court.

F. Unless good cause is shown for the noncompliance, the prevailing party may be entitled to recover court costs and attorney fees expended in enforcing the order and any other reasonable costs and expenses incurred in connection with the denied child support or denied visitation as authorized by the Court.

SECTION 6-101.48 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.49 **ENFORCEMENT OF VISITATION RIGHTS OF
NONCUSTODIAL PARENT.**

A. When a noncustodial parent has been granted visitation rights and those rights are denied or otherwise interfered with by the custodial parent, in addition to the remedy provided in Section 6-101.47, the noncustodial parent may file with the Court Clerk a motion for enforcement of visitation rights. Upon filing of the motion, the Court shall immediately:

1. issue an order for mediation; or
2. set a hearing on the motion.

B. Within five (5) days of termination of mediation ordered by the Court, the mediator shall submit the record of termination and a summary of the parties' agreement, if any, to the Court. Upon receipt of the record of termination, the Court shall enter an order in accordance with the parties' agreement, if any, or set the matter for hearing.

C. Notice of a hearing required by this Section shall be given to all interested parties by certified mail, return receipt requested, or as ordered by the Court.

D. If the Court finds that visitation rights of the noncustodial parent have been unreasonably denied or otherwise interfered with by the custodial parent, the Court shall enter an appropriate order providing for, but not limited to, one or more of the following:

1. a specific visitation schedule;
2. compensating visitation time for the visitation denied or otherwise interfered with, which time shall be of the same type (e.g. holiday, weekday, weekend, summer) as the visitation denied or otherwise interfered with, and shall be at the convenience of the noncustodial parent;
3. posting of a bond, either cash or with sufficient sureties, conditioned upon compliance with the order granting visitation rights;
4. assessment of reasonable attorney fees, mediation costs, and court costs to enforce visitation rights against the custodial parent;
5. attendance of one or both parents at counseling or educational sessions which focus on the impact of visitation disputes on children;
6. supervised visitation; or
7. any other remedy the Court considers appropriate, which may include an order which modifies a prior order granting child custody.

E. If the Court finds that the motion for enforcement of visitation rights has been unreasonably filed or pursued by the noncustodial parent, the Court may assess reasonable attorney fees, mediation costs, and court costs against the noncustodial parent.

F. Final disposition of a motion filed pursuant to this section shall take place no later than forty-five (45) days after filing of the motion.

G. The Court may develop the form required by Subsection A of this Section to be used for a motion to enforce visitation rights.

SECTION 6-101.50

**CHILD SUPPORT ENFORCEMENT DEPARTMENT
RECOGNIZED; DUTIES.**

The Legislature hereby recognizes the existing Child Support Enforcement Department ("CSE") of the Division of Youth and Family Services. The Legislature further recognizes that CSE may enter into contracts within and without the Chickasaw Nation for purposes of enforcement of child support orders. In all cases involving unmarried children under the age of eighteen (18) years, the Court may order that child support be computed and/or collected by CSE.

1. When the Court orders that child support shall be computed and/or collected by CSE, the parties shall be ordered to provide proof of income to CSE within five (5) days of the court order. If a party does not comply with such order, then all income alleged by the opposing party shall be accepted as true.

2. When so ordered, CSE shall act as a referee of the Court, compute the amount(s) to be paid as child support, method(s) of payment, and all other necessary determinations within twenty (20) days of the court order. CSE shall provide such determinations to the parties and to the Court for placement in the case file. The determinations of CSE shall be accepted as a child support order upon receipt by the Court.

3. If a party takes issue with a determination of CSE, the party may apply to the Court for a hearing on the matter. If an application for hearing is granted, the matter shall be heard within thirty (30) days.

SECTION 6-101.51

CARE, CUSTODY AND SUPPORT OF MINOR CHILDREN.

A. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the Marriage. If there are minor children of the Marriage, the Court:

1. shall make provision for guardianship, custody, medical care, support and education of the children;

2. shall provide for the visitation of the noncustodial parent with any of the children of the noncustodial parent, unless not in the best interests of the children; and

3. may modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of

the obligor and obligee, or if the obligee has assigned child support rights to CSE or other entity, by agreement of the CSE or other entity. Unless the parties agree to the contrary, a completed child support computation form shall be required to be filed with the child support order.

B. The social security numbers of both parents and the child shall be included on a child support order summary form which shall be filed with all child support orders.

C. In any action in which there are minor unmarried children in awarding or modifying the custody of the child or in appointing a General Guardian for the child, the Court shall be guided by what appears to be in the best interests of the child.

D. When it is in the best interests of a minor unmarried child, the Court shall:

1. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their Marriage; and
2. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

E. There shall be neither a legal preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody.

F. When in the best interests of the child, custody shall be awarded in a way which assures the frequent and continuing contact of the child with both parents. When awarding custody to either parent, the Court:

1. shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent; and
2. shall not prefer a parent as a custodian of the child because of the gender of that parent.

G. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-schooling in awarding the custody of a child, or in appointing a General Guardian for the child.

H. In making an order for custody, the Court may specify that:

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1. unless there is a prior written agreement to change the permanent residence of the child, either parent shall notify the other parent if the parent plans to change the permanent residence of the child, and

2. the noncustodial parent is to notify the custodial parent if the noncustodial parent plans to change permanent residence.

I. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child custody order.

J. For any action brought pursuant to the provisions of this section which the Court determines to be contrary to the best interests of the child, the prevailing party may be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

K. Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of twenty (20) years or until the child graduates or leaves high school, whichever occurs first. No hearing shall be required to extend such support through the age of twenty (20) if the child is regularly and continuously attending high school.

L. In any case in which provision is made for the custody or support of a minor child or enforcement of such order, the Court may inquire whether public assistance money or medical support has been provided by the Department of Human Services of the State of Oklahoma or any department of the Chickasaw Nation for the benefit of each child. If public assistance money or medical support has been provided for the benefit of the child, the Department of Human Services or appropriate department of the Chickasaw Nation shall be a necessary party for the just adjudication and establishment of the debt due and owing the State of Oklahoma or Chickasaw Nation for the just adjudication and establishment of paternity, current child support, and medical insurance coverage for the minor children in accordance with federal regulations.

M. In any case in which a child support order or custody order or both is entered, enforced or modified, the Court may make a determination of the arrearages of child support.

SECTION 6-101.52

RESERVED.

(PR19-018, 5/17/02)

SECTION 6-101.53

**EVIDENCE OF DOMESTIC ABUSE CONSIDERED-
REBUTTABLE PRESUMPTION.**

In every case involving the custody of, guardianship of or visitation with a child, the Court shall consider evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person. (PR19-018, 5/17/02)

SECTION 6-101.54

**PREFERENCE OF CHILD CONSIDERED IN CUSTODY
OR VISITATION ACTIONS.**

A. In any action for divorce, legal separation, or annulment in which the Court must determine custody or limits of or period of visitation, the child may express a preference as to which of its parents the child wishes to have custody. The Court may determine whether the best interest of the child will be served by the child's expression of preference as to which parent should have custody or limits of or period of visitation rights of either parent. If the Court so finds, the child may express such preference or give other testimony. The Court may consider the expression of preference or other testimony of the child in determining custody or limits of or period of visitation. Provided, however, the Court shall not be bound by the child's choice and may take other facts into consideration in awarding custody or limits of or period of visitation.

B. If the child expresses a preference or gives testimony, such preference or testimony may be taken by the Court in chambers, with or without the parents or other parties present, at the Court's discretion. If attorneys are not allowed to be present, the Court shall state, for the record, the reasons for their exclusion. At the request of either party, a record shall be made of any such proceeding in chambers.

SECTION 6-101.55

**INTEREST ON DELINQUENT CHILD SUPPORT AND
SUIT MONEYS PAYMENT.**

Court-ordered child support payments and court-ordered payments of suit moneys shall draw interest at the rate of ten percent (10%) per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues.

SECTION 6-101.56

**RESTORATION OF MAIDEN OR FORMER NAME;
ALIMONY; PROPERTY DIVISION.**

When a divorce is granted, the wife shall be restored to her maiden or former name if she so desires. The Court shall enter its decree confirming in each spouse the property owned by him

or her before Marriage and the undisposed-of property acquired after Marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the Court shall think reasonable, having due regard to the value of such property at the time of the divorce. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the Court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their Marriage, whether the title thereto be in either or both of said parties, the Court shall, subject to a valid antenuptial contract in writing, make such division between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one (1) of the parties, and requiring the other thereof to be paid such sum as may be just and proper to effect a fair and just division thereof. The Court may set apart a portion of the separate estate of a spouse to the other spouse for the support of the children of the Marriage where custody resides with that spouse.

SECTION 6-101.57 **SEPARATE PROPERTY.**

Except as mentioned in the preceding Section, neither husband nor wife has any interest in the separate property of the other.

SECTION 6-101.58 **DIVORCE DISSOLVES MARRIAGE CONTRACT AND BARS PROPERTY CLAIMS; EXCEPTION FOR ACTUAL FRAUD.**

A divorce granted at the instance of one (1) party shall operate as a dissolution of the Marriage contract as to both, and shall be a bar to any claim of either party in or to the property of the other, except in cases where actual fraud shall have been committed by or on behalf of the successful party.

SECTION 6-101.59 **UNLAWFUL TO MARRY WITHIN 6 MONTHS FROM DATE OF DIVORCE DECREE; PENALTY FOR REMARRIAGE AND COHABITATION; APPEAL.**

A. It shall be unlawful for either party to an action for divorce whose former husband or wife is living to marry a person other than the divorced spouse within six (6) months from date of decree of divorce granted in the Chickasaw Nation, or to cohabit with such other person during said period if the Marriage took place in any state; and if an appeal be commenced from said decree, it shall be unlawful for either party to such cause to marry any other person and cohabit with such person until the expiration of thirty (30) days from the date on which final judgment shall be rendered pursuant to such appeal.

B. An appeal from a final judgment shall be made in the manner as prescribed for by the Supreme Court of the Chickasaw Nation.

SECTION 6-101.60 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.61 **REMARriage AS GROUND FOR ANNULMENT.**

A Marriage wherein one of the parties had not been divorced for six (6) months shall hereafter in the Chickasaw Nation be ground for annulment of Marriage by either party.

SECTION 6-101.62 **TIME WHEN JUDGMENT IS FINAL IN DIVORCE; APPEAL.**

Every decree of divorce shall recite the day and date when the judgment was rendered. If an appeal be taken from a judgment granting or denying a divorce, that part of the judgment does not become final and take effect until the appeal is determined. If an appeal be taken from any part of a judgment in a divorce action except the granting of the divorce, the divorce shall be final and take effect from the date the decree of divorce is rendered, provided neither party thereto may marry another person until six (6) months after the date the decree of divorce is rendered; that part of the judgment appealed shall not become final and take effect until the appeal be determined.

SECTION 6-101.63 **ACTION TO VOID MARRIAGE DUE TO INCAPACITY.**

When either of the parties to a Marriage shall be incapable, from want of age or understanding, of contracting such Marriage, the same may be declared void by the Court, in an action brought by the incapable party or by the parent or guardian of such party. Cohabitation after such incapacity ceases, shall be a sufficient defense to any such action.

SECTION 6-101.64 **ALIMONY WITHOUT DIVORCE.**

The wife or husband may obtain alimony from the other without a divorce, in an action brought for that purpose in the Court. Either may make the same defense to such action as he might to an action for divorce, and may, for sufficient cause, obtain a divorce from the other in such action.

SECTION 6-101.65

EVIDENCE IN DIVORCE OR ALIMONY ACTIONS.

Upon the trial of an action for a divorce, or for alimony the Court may admit proof of the admissions of the parties to be received in evidence, carefully excluding such as shall appear to have been obtained by connivance, fraud, coercion or other improper means. Proof of cohabitation, and reputation of the Marriage of the parties, may be received as evidence of the Marriage. But no divorce shall be granted without proof.

SECTION 6-101.66

RESIDENCY IN DIVORCE ACTION.

A married person who meets the residence requirements prescribed by law for bringing a divorce action in the Chickasaw Nation may seek a divorce in the Chickasaw Nation, though the other spouse resides elsewhere.

SECTION 6-101.67

RESERVED.

(PR19-018, 5/17/02)

SECTION 6-101.68

DISSOLUTION OF DIVORCE DECREE.

When a decree of divorce has been issued by the Court, the Court is hereby authorized to dissolve said decree within six (6) months of entry thereof, in or out of the term wherein the decree was granted, provided that both parties to the divorce action file a petition, signed by both parties, asking that said decree be set aside and held for naught.

SECTION 6-101.69

**ALIMONY PAYMENTS; TERMINATION;
MODIFICATION.**

A. In any divorce decree which provides for periodic alimony payments, the Court shall plainly state, at the time of entering the original decree, the dollar amount of all or a portion of each payment which is designated as support and the dollar amount of all or a portion of the payment which is a payment pertaining to a division of property. The Court shall specify in the decree that the payments pertaining to a division of property shall continue until completed. Payments pertaining to a division of property are irrevocable and not subject to subsequent modification by the Court. An order for the payment of money pursuant to a divorce decree, whether designated as support or designated as pertaining to a division of property shall not be a lien against the real property of the person ordered to make such payments unless the court order specifically provides for a lien on real property. An arrearage in payments of support reduced to a judgment may be a lien against the real property of the person ordered to make such payments.

B. The Court shall also provide in the divorce decree that upon the death or remarriage of the recipient, the payments for support, if not already accrued, shall terminate. The Court shall order the judgment for the payment of support to be terminated, and the lien released upon the presentation of proper proof of death of the recipient unless a proper claim is made for any amount of past-due support payments by an executor, administrator, or heir within ninety (90) days from the date of death of the recipient. Upon proper application the Court shall order payment of support terminated and the lien discharged after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable, provided the recipient commences an action for such determination, within ninety (90) days of the date of such remarriage.

C. The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the Court shall have jurisdiction to reduce or terminate future support payments upon proof of substantial change of circumstances of either party to the divorce relating to need for support or ability to support. As used in this Subsection C, the term cohabitation means the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a Marriage according to law, or not necessarily meeting all the standards of a Common Law Marriage. The petitioner shall make application for modification and shall follow notification procedures used in other divorce decree modification actions. The Court shall have jurisdiction over the modification application.

D. Except as otherwise provided in Subsection C of this Section, the provisions of any divorce decree pertaining to the payment of alimony as support may be modified upon proof of changed circumstances relating to the need for support or ability to support which are substantial and continuing so as to make the terms of the decree unreasonable to either party. Modification by the Court of any divorce decree pertaining to the payment of alimony as support, pursuant to the provisions of this subsection, may extend to the terms of the payments and to the total amount awarded; provided however, such modification shall only have prospective application.

E. Pursuant to the federal Uniformed Services Former Spouse's Protection Act (PL 97-252), the provisions of Subsection D of this Section shall have retrospective and prospective application with regards to modifications for the purpose of obtaining support or payments pertaining to a division of property on divorce decrees which become final after June 26, 1981.

F. The provisions of Subsections C and D of this Section shall have retrospective and prospective application with regards to modifications of the provisions of a final judgment or

order for alimony as support, or of a divorce decree pertaining to the payment of alimony as support, regardless of the date that the order, judgment, or decree was entered.

SECTION 6-101.70 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.71 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.72 **PAST DUE SUPPORT PAYMENTS AS JUDGMENT;
ARREARAGE PAYMENT SCHEDULE.**

A. Any payment or installment of child support ordered pursuant to any order, judgment, or decree of the Court or administrative order of the Chickasaw Nation or state Department of Human Services is, on and after the date it becomes past due, a judgment by operation of law. Judgments for past due support shall:

1. have the full force and effect of any other judgment of the Chickasaw Nation, including the ability to be enforced by any method available under the laws of the Chickasaw Nation and the State of Oklahoma to enforce and collect money judgments; and
2. be entitled to full faith and credit as a judgment in the Chickasaw Nation and any state.
3. An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due. Any amounts determined to be past due by the Court may subsequently be enforced by indirect civil contempt proceedings.

B. An arrearage payment schedule set by the Court or administrative order of the Chickasaw Nation shall not exceed three (3) years, unless imposition of a payment schedule would be unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making this determination, reasonable support obligations of either parent for other children in the custody of the parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting the action shall be made.

SECTION 6-101.73 **COSTS IN CHILD SUPPORT ENFORCEMENT CASES.**

Costs incurred in a child support enforcement case in which a party is represented by CSE shall be recorded by the Court Clerk. The reasonable costs may be assessed by the Court against the nonprevailing party at the conclusion of the proceedings.

SECTION 6-101.74 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.75 **CONTRACTS ALTERING LEGAL RELATIONS NOT ALLOWED; EXCEPTIONS.**

A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree in writing to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

SECTION 6-101.76 **MUTUAL CONSENT AS CONSIDERATION.**

The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last Section.

SECTION 6-101.77 **HUSBAND AND WIFE; JOINT TENANTS, TENANTS IN COMMON OR COMMUNITY PROPERTY; SEPARATE PROPERTY INVENTORY AND FILING.**

A husband and wife may hold property as joint tenants, tenants in common, or as community property.

SECTION 6-101.78 **LIABILITY FOR ACTS AND DEBTS OF THE OTHER SPOUSE; CURTESY AND DOWER NOT ALLOWED AT DEATH.**

- A. Neither husband nor wife, as such, is answerable for the acts of the other.
- B. The separate property of the husband is liable for the debts of the husband contracted before or after Marriage, but is not liable for the debts of the wife contracted before the Marriage.

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C. The separate property of the wife is liable for the debts of the wife contracted before or after Marriage, but is not liable for the debts of the husband contracted before the Marriage.

D. No estate is allowed the husband as tenant by curtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

SECTION 6-101.79 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.80 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.81 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.82 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.83 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.84 **RESERVED.**

(PR19-018, 5/17/02)

SECTION 6-101.85 **EX PARTE ORDERS; WRITS OF HABEAS CORPUS.**

A. The courts of the Chickasaw Nation in domestic relations cases are not authorized to issue *ex parte* orders, except in cases of emergency with findings of fact set forth within the order.

B. Writs of *Habeas Corpus* may be issued by any Judge of any court of the Chickasaw Nation in divorce actions, whether such Judge is presiding over said divorce action or not, provided that said Judge receives a written Application for Writ of *Habeas Corpus* and the

writ provides a time and date certain for the matter to be heard in any court of the Chickasaw Nation.

SECTION 6-101.86

JURISDICTION ASSERTED IN MORE THAN ONE VENUE.

In a divorce action, if jurisdiction is asserted in more than one venue, then the Judge presiding over the action shall contact the judge of the other venue to settle the jurisdiction controversy.

SECTION 6-101.87

RECIPROCITY.

A. A copy of any tribal judgment under this Title shall be authenticated for the purpose of filing with a district Court Clerk of any federal, state or tribal courts in the following manner:

1. by certification of a true and correct copy of the record on file in the office of the Clerk of the District Court or Supreme Court; and
2. by authentication of the certified copy by a Judge of the District Court.

B. The Court shall extend full faith and credit to the records and judicial proceeding of any court of any state, United States or any federally recognized Indian nation, tribe, land or political

subdivision thereof, including Courts of Indian Offenses, in accordance with Title 5, Chapter 2, Article B, Section 5-202.21 of the Chickasaw Nation Code.

SECTION 6-101.88

REGISTRATION OF FOREIGN DETERMINATION OF CHILD CUSTODY.

A. A child custody determination issued by any court of any State, United States or any federally recognized Indian nation, tribe, land or political subdivision thereof, including Courts of Indian Offenses, may be registered in the Court, with or without a simultaneous request for enforcement, by sending to the Court:

1. a petition, application or letter requesting registration;

2. two (2) copies, including one (1) certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

3. the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

B. On receipt of the documents required above, the registering court shall:

1. cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

2. serve notice upon the person(s) named as required above and provide them with an opportunity to contest the registration in accordance with this section.

C. The notice required above must state that:

1. a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by the Court;

2. a hearing to contest the validity of the registered determination must be requested within twenty (20) days after service of notice; and

3. failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

D. A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the Court shall confirm the registered order unless the person contesting registration establishes that:

1. the issuing court did not have jurisdiction;

2. the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so; or

3. the person contesting registration was entitled to notice, but sufficient notice was not given, in the proceedings before the court that issued the order for which registration is sought.

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E. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

F. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

SECTION 6-101.89 **ENFORCEMENT.**

Enforcement of a determination of the Court under this Act may be made by registering said determination in any court of competent jurisdiction.

SECTION 6-101.90 **CHILD SUPPORT.**

A. In all cases involving minor children, child support shall be determined or redetermined or as the case may be upon hearing on application of either parent for any affirmative relief.

1. A person under the age of twenty (20) and not graduated from a high school shall be considered a minor child provided the child is regularly attending public or private school.

2. A person under the age of eighteen (18) shall be considered a minor child.

B. The Court shall determine child support by referring the parties to the Chickasaw Nation Child Support Enforcement Department (CSE) to act as referee to determine child support pursuant to guidelines established by Title 6 Section 6-102 *et seq.*

C. Should either the payor or payee of child support take issue with the ruling of child support CSE, said party may appeal the child support order within ten (10) days of the CSE's filing of the determination with the Court. Hearing on such appeal shall be a de novo review; however, either party may request the CSE appear before the Court to explain the determination made on the basis that CSE maintains expertise in child support determination.

D. Absent specific direction of the Court, all child support shall be due on the first day of each month.

E. The CSE may institute child support collection cases in the name of the Chickasaw Nation on behalf of any payee for whom CSE is collecting support, provided nothing

herein shall prevent any payee of child support from retaining independent counsel and collecting child support directly in the name of the payee.

F. Any attorney retained to collect child support for a payee shall notice the CSE of being so retained. Said attorney shall report all child support legal action and collection to CSE within ten (10) days of such action or collection.

**ARTICLE B
CHILD SUPPORT GUIDELINES**

Section 6-102.1	Purpose.
Section 6-102.2	Child Support Orders to Include Provision for Income Assignment; Voluntary Income Assignment.
Section 6-102.3	Child Support Orders to Include Provision for Health Insurance and Day Care Expenses.
Section 6-102.4	Security or Bond for Payment of Child Support.
Section 6-102.5	Modification, Suspension or Termination of Income Assignment Order.
Section 6-102.6	Child Support Guidelines.
Section 6-102.7	Dependent Minor Child.
Section 6-102.8	Reserved.
Section 6-102.9	Reserved.
Section 6-102.10	Child Support Guideline Schedule.
Section 6-102.11	Reserved.
Section 6-102.12	Child Support Computation Form.
Section 6-102.13	Children Not Otherwise Considered.

SECTION 6-102.1 **PURPOSE.**

The purpose of this Article B is to provide child support guidelines for the Chickasaw Nation. The child support guidelines as provided herein shall be used by the courts of the Chickasaw Nation in any proceeding which involves the care, custody and control of minor children and/or incompetents and the Court determines a need for child support to be provided by one (1) or more parties. (PR19-019, 6/27/02)

SECTION 6-102.2 **CHILD SUPPORT ORDERS TO INCLUDE PROVISION
FOR INCOME ASSIGNMENT; VOLUNTARY INCOME
ASSIGNMENT.**

A. In all child support cases arising out of an action for divorce, paternity or other proceeding, the Court order the wage of the obligor subject to immediate income assignment, regardless of whether support payments by such parent are in arrears, unless:

1. one (1) of the parties demonstrates and the Court finds there is good cause not to require immediate income withholding; or
2. a written agreement is reached between the parties which provides for an alternative arrangement.

B. The obligated party may execute a voluntary income assignment at any time. The voluntary assignment shall be filed with the Court and shall take effect after service on the payor.

SECTION 6-102.3 **CHILD SUPPORT ORDERS TO INCLUDE PROVISION FOR HEALTH INSURANCE AND DAY CARE EXPENSES.**

In all cases where child support is ordered, such order shall include provisions for providing or sharing the expenses of health insurance and other out-of-pocket medical costs of the minor child(ren), and for employment-related day care expenses.

SECTION 6-102.4 **SECURITY OR BOND FOR PAYMENT OF CHILD SUPPORT.**

The Court may order a person obligated to support a minor child to post a security, bond, or other guarantee in a form and amount satisfactory to the Court to ensure the payment of child support.

SECTION 6-102.5 **MODIFICATION, SUSPENSION OR TERMINATION OF INCOME ASSIGNMENT ORDER.**

A person obligated to pay support or the person entitled to the support may petition the Court to:

1. modify, suspend, or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or
2. modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise; or
3. suspend the order for income assignment because of inability to deliver income withheld to the person entitled to support payments due to the failure of the person entitled to support to provide a mailing address or other means of delivery.

SECTION 6-102.6 **CHILD SUPPORT GUIDELINES.**

A. Except in those cases where parties represented by counsel have agreed to a different disposition, there shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support that the amount of the award which would result from the application of the guidelines is the correct amount of child support to be awarded.

B. The Court may deviate from the amount of child support indicated by the child support guidelines if the amount of support so indicated is unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of any child involved. If the Court deviates from the amount of child support indicated by the child support guidelines, the Court shall make specific findings of fact supporting such action.

C. The Court shall not take into account any stepchildren of such parent in making the determination, but in making such determination, the Court may take into account the reasonable support obligations of either parent as to only natural, legal, or legally adopted minor children in the custody of the parent.

D. For purposes of this section and in determining child support, the noncustodial parent shall be designated the obligor and the custodial parent shall be designated the obligee. The Court may establish a temporary child support obligation against both parents when the minor children are made wards of the Court and/or are placed in foster care or in the home of a guardian or Indian tribe.

E. The child support guidelines are as follows:

1. All child support shall be computed as a percentage of the combined Gross Income of both parents. The Child Support Guideline Schedule provided in this Article B shall be used for such computation. The child support obligations of each parent shall be computed. The obligor's share shall be paid monthly to the obligee and shall be due on a specific date.

2. Definitions:

a. "Gross Income," subject to Paragraph 4 of this Subsection, includes Earned and Passive Income from any source, except as excluded in this Section.

b. "Earned Income" is defined as income received from labor, or the sale of goods or services and includes, but is not limited to, income from:

- i. salaries;
- ii. wages;
- iii. commissions;
- iv. bonuses; and

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v. severance pay.

c. "Passive Income" is defined as all other income and includes, but is not limited to, income from:

- i. dividends;
- ii. pensions;
- iii. rent;
- iv. interest income;
- v. trust income;
- vi. annuities;
- vii. social security benefits;
- viii. workers' compensation benefits;
- ix. unemployment insurance benefits;
- x. disability insurance benefits;
- xi. gifts;
- xii. prizes; and
- xiii. royalties.

3. Specifically excluded from Gross Income are:

- a. actual child support received for children not before the Court, and
- b. benefits received from means-tested public assistance programs including, but not limited to:
 - i. Temporary Assistance for Needy Families (TANF);
 - ii. Supplemental Security Income (SSI);

iii. Food Stamps; and

iv. General Assistance and State Supplemental Payments for Aged, Blind and the Disabled.

4. Income and expenses:

a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "Gross Income" is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations.

b. Specifically excluded from ordinary and necessary expenses for purposes of this Paragraph 4 are amounts determined by the Court to be inappropriate for determining Gross Income for purposes of calculating child support.

c. The Court shall carefully review income and expenses from self-employment or operation of a business to determine an appropriate level of Gross Income available to the parent to satisfy a child support obligation.

d. The Court shall deduct from self-employment Gross Income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent Gross Income amount. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation.

e. Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments may include but are not limited to a company car, free housing, or reimbursed meals.

5. Obligation of parents:

a. For purposes of computing Gross Income of the parents, the Court shall include for each parent, whichever is most equitable, either:

i. all earned and passive monthly income;

ii. all Passive Income, and Earned Income equivalent to a forty (40) hour work week plus such overtime and supplemental income as the Court deems equitable;

iii. the average of the gross monthly income for the time actually employed during the previous three (3) years; or

iv. the minimum wage paid for a forty (40) hour work week.

b. If equitable, the Court may instead impute as gross monthly income for either parent the amount a person with comparable education, training and experience could reasonably expect to earn.

c. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly Gross Income.

6. The amount of any preexisting court order for current child support for children not before the Court or for support alimony arising in a prior case shall be deducted from Gross Income to the extent payment is actually made under the order.

7. The amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parents may be deducted from Gross Income to the extent payment of the debt is actually made. In any case where deduction for debt service is made, the Court may provide for prospective upward adjustments of support made possible by the reasonably anticipated reduction or elimination of any debt service.

8. The results of Paragraphs 2, 3, 4, 5, 6 and 7 of this Subsection shall be denominated "Adjusted Gross Income."

9. In cases in which one parent has sole custody, the Adjusted monthly Gross Income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for child support.

10. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined Adjusted Gross Income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent.

11. Obligation of parents adjusted:

a. In cases where Shared Parenting Time has been ordered by the Court or agreed to by the parents, the base monthly obligation shall be adjusted. "Shared Parenting Time" means that each parent has physical custody of the child or children overnight for more than one hundred twenty (120) nights each year.

b. An adjustment for Shared Parenting Time shall be made to the base monthly child support obligation by the following formula: The total combined base monthly child support obligation shall be multiplied by one and one-half ($1\frac{1}{2}$). The result shall be designated the "Adjusted Combined Child Support Obligation."

c. To determine each parent's adjusted child support obligation, the Adjusted Combined Child Support Obligation shall be divided between the parents in proportion to their respective Adjusted Gross Incomes.

i. The percentage of time a child spends with each parent shall be calculated by determining the number of nights the child is in the physical custody of each parent and dividing that number by three hundred and sixty-five (365).

ii. Each parent's share of the Adjusted Combined Child Support obligation shall then be multiplied by the percentage of time the child spends with the other parent to determine the base child support obligation owed to the other parent. For each parent, this amount is then subtracted from the respective share of the Adjusted Combined Child Support Obligation.

iii. The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paying the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars (\$0).

d. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no case, shall the amount of child support ordered to be paid exceed the amount of child support which would otherwise be ordered to be paid if the parents did not participate in Shared Parenting Time.

e. In no event shall the provisions of this Paragraph 11 be construed to authorize or allow the payment of child support by the custodial parent to the noncustodial parent.

12. Insurance premiums:

a. The actual medical and dental insurance premium for the child shall be allocated between the parents in the same proportion as their Adjusted Gross Income and shall be added to the base child support obligation. If the insurance policy covers a person other than the child before the Court, only that portion of the premium attributed to the child before the Court shall be allocated and added to the base child support obligation.

b. If the obligor pays the medical insurance premium, the obligor shall receive credit against the base child support obligation for the obligee's allocated share of the medical insurance premium.

c. If the obligee pays the medical insurance premium, the obligor shall pay the obligor's allocated share of the medical insurance premium to the obligee as part of the base child support obligation;

13. In cases of split custody, where each parent is awarded custody of at least one (1) of their natural or legally adopted children, the child support obligation for each parent shall be calculated by application of the child support guidelines for each custodial arrangement. The parent with the larger child support obligation shall pay the difference between the two (2) amounts to the parent with the smaller child support obligation.

14. Child care expenses:

a. The Court shall determine the "Actual" child care expenses reasonably necessary to enable either or both parents to:

- (1) be employed;
- (2) seek employment; or
- (3) attend school or training to enhance employment income.

b. The Actual child care costs incurred for the purposes authorized by this Paragraph 14 shall be allocated and paid monthly in the same proportion as base child support.

c. The Court shall require the obligee to provide the obligor with timely documentation of any change in the amount of the child care costs. Upon request by the obligor, whose requests shall not exceed one each month, or upon order of the Court, the obligee shall provide the documentation of the amount of incurred child care costs which are related to employment, employment search or education or training as authorized by this Paragraph 14.

d. If the Court determines that it will not cause detriment to the child or will not cause undue hardship to either parent, in lieu of payment of child care expenses incurred during employment, employment search, or while the obligee is attending school or training, the obligor may provide care for the child during that time.

15. Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance may be allocated in the same proportion as the parents' Adjusted Gross Income as separate items that are not added to the base child support obligation. If reimbursement is required, the parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense.

16. Transportation expenses of a child between the homes of the parents may be divided between the parents in proportion to their Adjusted Gross Income.

17. Material change in circumstances:

a. Child support orders may be modified upon a material change in circumstances.

b. Three (3) years after the issuance of any child support order the Chickasaw Nation Child Support Enforcement Department of Youth and Family Services ("CSE") may file an action for modification of child support based upon application of either party. Either party may file an action for modification of child support at any time after entry of decree upon showing a material change of circumstances.

c. Providing support for children born to or adopted by either parent after the entry of a child support order shall not alone be considered a material change in circumstances.

d. An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to the contrary or the Court makes a specific finding of fact that the material change of circumstance did not occur until a later date.

e. A child support order shall not be modified retroactively regardless of whether support was ordered in a temporary order, a decree of divorce, an order establishing paternity, modification of an order of support, or other action to establish or to enforce support.

f. All final orders shall state whether past due support and interest has accrued pursuant to any temporary order and the amount due, if any; however, failure to state a past due amount shall not bar collection of that amount after entry of the final support order.

g. The amount of a child support order shall not be construed to be an amount per child unless specified by the Court in the order. A child reaching the age of majority or otherwise ceasing to be entitled to support pursuant to the support order shall constitute a material change in circumstances, but shall not automatically serve to modify the order.

18. Exchange of parental information:

a. At any time after the issuance of child support order, either parent may request the other parent to provide the information necessary for an informal review and adjustment process. Information shall be provided to the requesting parent within forty-five (45) days of the request.

b. Requested information may include verification of income, proof and cost of children's medical insurance, and current and projected child care costs. If Shared Parenting Time has been awarded by the Court, documentation of past and prospective overnight visits shall be exchanged.

c. Exchange of requested information may occur once a year or less often, by regular mail.

19. The social security numbers of both parents and the children who are the subject of the order shall be furnished by the parties to CSE.
(PR19-019, 6/27/02; PR19-023, 7/19/02)

Domestic Relations & Families

SECTION 6-102.7**DEPENDENT MINOR CHILD.**

Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of twenty (20) years or until the child graduates or leaves high school, whichever occurs first. No hearing shall be required to extend such support through the age of twenty (20) if the child is regularly and continuously attending high school. (PR19-024, 8/19/02)

SECTION 6-102.8**RESERVED.**

(PR19-019, 6/27/02)

SECTION 6-102.9**RESERVED.**

(PR19-019, 6/27/02)

SECTION 6-102.10**CHILD SUPPORT GUIDELINE SCHEDULE.**

A. Child Support shall be computed in accordance with the following Child Support Guideline Schedule:

If Combined Monthly Income Total Support Amount is equal to or above	One Child	Two Children	Three Children	Four Children	Five Children	Six Children or More
50	50	50	50	50	50	50
650	50	50	50	88	118	141
700	50	50	101	122	154	176
750	61	107	132	156	198	207
800	94	141	165	190	239	242
850	127	174	199	224	274	276
900	159	207	232	258	308	311
950	192	240	265	291	342	345
1,000	206	272	298	325	375	379
1,050	215	305	332	359	409	414
1,100	224	326	365	392	443	448

Domestic Relations & Families

1,150	232	338	397	425	476	481
1,200	241	351	415	458	497	515
1,250	249	363	430	475	515	551
1,300	257	375	443	490	531	568
1,350	265	386	457	504	547	585
1,400	273	397	470	519	562	602
1,450	280	408	483	533	578	618
1,500	288	419	496	548	594	635
1,550	296	430	509	562	609	652
1,600	304	442	522	576	625	669
1,650	312	453	535	591	640	685
1,700	319	464	548	605	656	702
1,750	327	475	561	620	672	719
1,800	335	486	574	634	687	735
1,850	343	497	587	648	703	752
1,900	351	509	600	663	718	769
1,950	358	520	613	677	734	785
2,000	366	531	626	691	750	802
2,050	374	542	639	706	765	819
2,100	382	554	652	720	781	835
2,150	390	565	665	735	796	852
2,200	398	576	678	749	812	869
2,250	406	587	691	763	828	886
2,300	414	599	704	778	843	902
2,350	422	610	717	792	859	919
2,400	430	621	730	807	874	936
2,450	437	632	743	821	890	952
2,500	445	643	755	835	905	968
2,550	451	653	768	848	919	984
2,600	458	663	780	862	934	1,000
2,650	465	673	792	875	949	1,015
2,700	472	683	804	888	963	1,030
2,750	477	691	814	900	975	1,043
2,800	483	700	824	911	987	1,056
2,850	489	708	834	922	999	1,069
2,900	494	716	844	933	1,011	1,082

Domestic Relations & Families

2,950	500	725	854	944	1,023	1,095
3,000	505	733	864	955	1,035	1,107
3,050	511	741	874	966	1,047	1,120
3,100	517	749	884	977	1,059	1,133
3,150	521	756	892	986	1,069	1,143
3,200	525	761	897	992	1,075	1,150
3,250	528	766	903	998	1,081	1,157
3,300	532	771	908	1,003	1,088	1,164
3,350	535	776	913	1,009	1,094	1,170
3,400	539	780	919	1,015	1,100	1,177
3,450	543	785	924	1,021	1,107	1,184
3,500	546	790	929	1,027	1,113	1,191
3,550	550	795	935	1,033	1,119	1,198
3,600	553	800	940	1,039	1,126	1,205
3,650	557	805	945	1,045	1,132	1,211
3,700	560	809	951	1,050	1,139	1,218
3,750	564	814	956	1,056	1,145	1,225
3,800	567	819	961	1,062	1,151	1,232
3,850	571	824	966	1,068	1,158	1,239
3,900	574	828	972	1,074	1,164	1,245
3,950	577	832	977	1,079	1,170	1,252
4,000	580	837	982	1,085	1,176	1,258
4,050	583	841	987	1,090	1,182	1,265
4,100	586	845	992	1,096	1,188	1,271
4,150	589	850	997	1,102	1,194	1,278
4,200	592	854	1,002	1,107	1,200	1,284
4,250	595	859	1,007	1,113	1,206	1,291
4,300	598	863	1,012	1,119	1,213	1,297
4,350	601	867	1,017	1,124	1,219	1,304
4,400	604	872	1,023	1,130	1,225	1,311
4,450	607	876	1,028	1,136	1,231	1,317
4,500	610	880	1,033	1,141	1,237	1,324
4,550	613	885	1,038	1,147	1,243	1,330
4,600	617	890	1,044	1,154	1,250	1,338
4,650	622	897	1,052	1,162	1,260	1,348
4,700	626	903	1,059	1,171	1,269	1,358

Domestic Relations & Families

4,750	631	910	1,067	1,179	1,278	1,368
4,800	636	916	1,075	1,188	1,287	1,377
4,850	640	923	1,082	1,196	1,296	1,387
4,900	645	930	1,090	1,205	1,306	1,397
4,950	650	936	1,098	1,213	1,315	1,407
5,000	654	943	1,105	1,222	1,324	1,417
5,050	659	950	1,113	1,230	1,333	1,427
5,100	664	956	1,121	1,239	1,343	1,437
5,150	668	963	1,129	1,247	1,352	1,446
5,200	673	969	1,136	1,256	1,361	1,456
5,250	678	976	1,144	1,264	1,370	1,466
5,300	682	982	1,151	1,272	1,379	1,475
5,350	686	987	1,157	1,279	1,386	1,483
5,400	689	992	1,163	1,285	1,393	1,490
5,450	692	997	1,168	1,291	1,400	1,498
5,500	696	1,002	1,174	1,297	1,406	1,505
5,550	699	1,007	1,180	1,304	1,413	1,512
5,600	703	1,012	1,185	1,310	1,420	1,519
5,650	706	1,017	1,191	1,316	1,427	1,527
5,700	709	1,022	1,197	1,322	1,433	1,534
5,750	713	1,027	1,203	1,329	1,441	1,542
5,800	717	1,032	1,209	1,336	1,448	1,550
5,850	721	1,038	1,216	1,343	1,456	1,558
5,900	724	1,043	1,222	1,350	1,464	1,566
5,950	728	1,049	1,228	1,357	1,471	1,574
6,000	732	1,054	1,234	1,364	1,479	1,582
6,050	736	1,060	1,241	1,371	1,487	1,591
6,100	741	1,067	1,249	1,380	1,496	1,601
6,150	746	1,074	1,257	1,389	1,506	1,612
6,200	751	1,081	1,266	1,398	1,516	1,622
6,250	756	1,088	1,274	1,407	1,526	1,633
6,300	761	1,095	1,282	1,417	1,536	1,643
6,350	765	1,102	1,290	1,426	1,545	1,653
6,400	770	1,109	1,298	1,435	1,555	1,664
6,450	775	1,116	1,306	1,444	1,565	1,674
6,500	780	1,123	1,315	1,453	1,575	1,685

Domestic Relations & Families

6,550	785	1,130	1,323	1,462	1,584	1,695
6,600	790	1,137	1,331	1,471	1,594	1,706
6,650	795	1,144	1,339	1,480	1,604	1,716
6,700	800	1,151	1,347	1,489	1,614	1,727
6,750	805	1,158	1,355	1,498	1,623	1,737
6,800	810	1,165	1,364	1,507	1,633	1,748
6,850	815	1,172	1,372	1,516	1,643	1,758
6,900	819	1,179	1,380	1,525	1,653	1,768
6,950	824	1,186	1,388	1,534	1,663	1,779
7,000	829	1,193	1,396	1,543	1,672	1,789
7,050	834	1,200	1,404	1,552	1,682	1,800
7,100	838	1,206	1,411	1,560	1,691	1,809
7,150	842	1,211	1,418	1,567	1,698	1,817
7,200	846	1,217	1,424	1,574	1,706	1,825
7,250	850	1,222	1,430	1,581	1,713	1,833
7,300	853	1,228	1,437	1,588	1,721	1,842
7,350	857	1,233	1,443	1,595	1,729	1,850
7,400	861	1,238	1,450	1,602	1,736	1,858
7,450	864	1,244	1,456	1,609	1,744	1,866
7,500	868	1,249	1,462	1,616	1,751	1,874
7,550	872	1,254	1,469	1,623	1,759	1,882
7,600	875	1,260	1,475	1,630	1,767	1,890
7,650	879	1,265	1,481	1,637	1,774	1,899
7,700	883	1,270	1,488	1,644	1,782	1,907
7,750	887	1,276	1,494	1,651	1,790	1,915
7,800	890	1,281	1,500	1,658	1,797	1,923
7,850	894	1,287	1,507	1,665	1,805	1,931
7,900	898	1,292	1,513	1,672	1,812	1,939
7,950	901	1,297	1,519	1,679	1,820	1,947
8,000	905	1,303	1,526	1,686	1,828	1,955
8,050	909	1,308	1,532	1,693	1,835	1,964
8,100	912	1,313	1,538	1,700	1,843	1,972
8,150	916	1,319	1,545	1,707	1,850	1,980
8,200	920	1,324	1,551	1,714	1,858	1,988
8,250	924	1,330	1,557	1,721	1,866	1,996
8,300	927	1,335	1,564	1,728	1,873	2,004

Domestic Relations & Families

8,350	931	1,340	1,570	1,735	1,881	2,012
8,400	935	1,346	1,577	1,742	1,888	2,021
8,450	938	1,351	1,583	1,749	1,896	2,029
8,500	943	1,357	1,590	1,757	1,905	2,038
8,550	949	1,363	1,597	1,765	1,913	2,047
8,600	954	1,369	1,605	1,773	1,922	2,057
8,650	959	1,375	1,612	1,781	1,931	2,066
8,700	964	1,381	1,619	1,789	1,939	2,075
8,750	969	1,387	1,626	1,797	1,948	2,084
8,800	974	1,393	1,633	1,805	1,957	2,093
8,850	979	1,399	1,641	1,813	1,965	2,103
8,900	984	1,405	1,648	1,821	1,974	2,112
8,950	989	1,411	1,655	1,829	1,982	2,121
9,000	995	1,417	1,662	1,837	1,991	2,130
9,050	1,000	1,423	1,669	1,845	2,000	2,140
9,100	1,005	1,429	1,677	1,853	2,008	2,149
9,150	1,010	1,435	1,684	1,861	2,017	2,158
9,200	1,015	1,441	1,691	1,869	2,026	2,167
9,250	1,020	1,447	1,698	1,877	2,034	2,177
9,300	1,025	1,453	1,706	1,885	2,043	2,186
9,350	1,030	1,459	1,713	1,893	2,052	2,195
9,400	1,035	1,465	1,720	1,901	2,060	2,204
9,450	1,040	1,471	1,727	1,909	2,069	2,214
9,500	1,046	1,477	1,734	1,917	2,077	2,223
9,550	1,051	1,483	1,742	1,924	2,086	2,232
9,600	1,056	1,489	1,749	1,932	2,095	2,241
9,650	1,061	1,495	1,756	1,940	2,103	2,251
9,700	1,066	1,501	1,763	1,948	2,112	2,260
9,750	1,071	1,507	1,770	1,956	2,121	2,269
9,800	1,076	1,513	1,778	1,964	2,129	2,278
9,850	1,081	1,519	1,785	1,972	2,138	2,288
9,900	1,086	1,525	1,792	1,980	2,147	2,297
9,950	1,091	1,531	1,799	1,988	2,155	2,306
10,000	1,097	1,537	1,807	1,996	2,164	2,315
10,050	1,102	1,543	1,814	2,004	2,173	2,325
10,100	1,107	1,549	1,821	2,012	2,181	2,334

Domestic Relations & Families

10,150	1,112	1,555	1,828	2,020	2,190	2,343
10,200	1,117	1,561	1,835	2,028	2,198	2,352
10,250	1,122	1,567	1,843	2,036	2,207	2,362
10,300	1,127	1,574	1,850	2,044	2,216	2,371
10,350	1,132	1,580	1,857	2,052	2,224	2,380
10,400	1,137	1,586	1,864	2,060	2,233	2,389
10,450	1,142	1,592	1,871	2,068	2,242	2,399
10,500	1,148	1,598	1,879	2,076	2,250	2,408
10,550	1,153	1,604	1,886	2,084	2,259	2,417
10,600	1,158	1,610	1,893	2,092	2,268	2,426
10,650	1,163	1,616	1,900	2,100	2,276	2,436
10,700	1,168	1,622	1,907	2,108	2,285	2,445
10,750	1,173	1,628	1,915	2,116	2,293	2,454
10,800	1,178	1,634	1,922	2,124	2,302	2,463
10,850	1,183	1,640	1,929	2,132	2,311	2,473
10,900	1,188	1,646	1,936	2,140	2,319	2,482
10,950	1,193	1,652	1,944	2,148	2,328	2,491
11,000	1,199	1,658	1,951	2,156	2,337	2,500
11,050	1,204	1,664	1,958	2,164	2,345	2,509
11,100	1,209	1,670	1,965	2,172	2,354	2,519
11,150	1,214	1,676	1,972	2,180	2,363	2,528
11,200	1,219	1,682	1,980	2,188	2,371	2,537
11,250	1,221	1,686	1,984	2,193	2,377	2,543
11,300	1,223	1,689	1,898	2,197	2,382	2,549
11,350	1,225	1,693	1,993	2,202	2,387	2,554
11,400	1,227	1,697	1,997	2,207	2,392	2,560
11,450	1,229	1,700	2,001	2,212	2,397	2,565
11,500	1,231	1,704	2,006	2,216	2,403	2,571
11,550	1,233	1,708	2,010	2,221	2,408	2,576
11,600	1,235	1,711	2,014	2,226	2,413	2,582
11,650	1,237	1,715	2,019	2,231	2,418	2,587
11,700	1,239	1,719	2,023	2,235	2,423	2,593
11,750	1,241	1,723	2,027	2,240	2,428	2,598
11,800	1,243	1,726	2,031	2,245	2,433	2,604
11,850	1,245	1,730	2,036	2,249	2,438	2,609
11,900	1,247	1,734	2,040	2,254	2,444	2,615

Domestic Relations & Families

11,950	1,249	1,737	2,044	2,259	2,449	2,620
12,000	1,251	1,741	2,049	2,264	2,454	2,626
12,050	1,253	1,745	2,053	2,268	2,459	2,631
12,100	1,255	1,748	2,057	2,273	2,464	2,637
12,150	1,257	1,752	2,061	2,278	2,469	2,642
12,200	1,259	1,756	2,066	2,283	2,474	2,648
12,250	1,261	1,759	2,070	2,287	2,479	2,653
12,300	1,263	1,763	2,074	2,292	2,485	2,659
12,350	1,265	1,767	2,079	2,297	2,490	2,664
12,400	1,267	1,770	2,083	2,302	2,495	2,669
12,450	1,270	1,774	2,087	2,306	2,500	2,675
12,500	1,272	1,778	2,091	2,311	2,505	2,680
12,550	1,274	1,781	2,096	2,316	2,510	2,686
12,600	1,276	1,785	2,100	2,320	2,515	2,691
12,650	1,278	1,789	2,104	2,325	2,520	2,697
12,700	1,280	1,792	2,109	2,330	2,526	2,702
12,750	1,282	1,796	2,113	2,335	2,531	2,708
12,800	1,284	1,800	2,117	2,339	2,536	2,713
12,850	1,286	1,803	2,121	2,344	2,541	2,719
12,900	1,288	1,807	2,126	2,349	2,546	2,724
12,950	1,290	1,811	2,130	2,354	2,551	2,730
13,000	1,292	1,814	2,134	2,358	2,556	2,735
13,050	1,294	1,818	2,138	2,363	2,562	2,741
13,100	1,296	1,822	2,143	2,368	2,567	2,746
13,150	1,298	1,825	2,147	2,372	2,572	2,752
13,200	1,300	1,829	2,151	2,377	2,577	2,757
13,250	1,302	1,833	2,156	2,382	2,582	2,763
13,300	1,304	1,836	2,160	2,387	2,587	2,768
13,350	1,306	1,840	2,164	2,391	2,592	2,774
13,400	1,308	1,844	2,168	2,396	2,597	2,779
13,450	1,310	1,847	2,173	2,401	2,603	2,785
13,500	1,312	1,851	2,177	2,406	2,608	2,790
13,550	1,314	1,855	2,181	2,410	2,613	2,796
13,600	1,316	1,858	2,186	2,415	2,618	2,801
13,650	1,318	1,862	2,190	2,420	2,623	2,807
13,700	1,320	1,866	2,194	2,425	2,628	2,812

Domestic Relations & Families

13,750	1,322	1,869	2,198	2,429	2,633	2,818
13,800	1,324	1,873	2,203	2,434	2,638	2,823
13,850	1,326	1,877	2,207	2,439	2,644	2,829
13,900	1,328	1,880	2,211	2,443	2,649	2,834
13,950	1,330	1,884	2,216	2,448	2,654	2,840
14,000	1,332	1,888	2,220	2,453	2,659	2,845
14,050	1,334	1,891	2,224	2,458	2,664	2,851
14,100	1,336	1,895	2,228	2,462	2,669	2,856
14,150	1,338	1,899	2,233	2,467	2,674	2,862
14,200	1,340	1,902	2,237	2,472	2,679	2,867
14,250	1,342	1,906	2,240	2,477	2,685	2,873
14,300	1,344	1,910	2,246	2,481	2,690	2,878
14,350	1,346	1,913	2,250	2,486	2,695	2,884
14,400	1,348	1,917	2,254	2,491	2,700	2,889
14,450	1,350	1,921	2,258	2,496	2,705	2,894
14,500	1,352	1,924	2,263	2,500	2,710	2,900
14,550	1,354	1,928	2,267	2,505	2,715	2,905
14,600	1,356	1,932	2,271	2,510	2,721	2,911
14,650	1,358	1,935	2,276	2,514	2,726	2,916
14,700	1,360	1,939	2,280	2,519	2,731	2,922
14,750	1,362	1,943	2,284	2,524	2,736	2,927
14,800	1,364	1,946	2,288	2,529	2,741	2,933
14,850	1,366	1,950	2,293	2,533	2,746	2,938
14,900	1,368	1,954	2,297	2,538	2,751	2,944
14,950	1,370	1,957	2,301	2,543	2,756	2,949
15,000	1,372	1,961	2,305	2,548	2,762	2,955

B. If combined gross monthly income exceeds fifteen thousand dollars (\$15,000), the child support shall be that amount computed for a monthly income of fifteen thousand dollars (\$15,000) and an additional amount determined by the Court.

C. If there are more than six (6) children, the child support shall be that amount computed for six (6) children and an additional amount determined by the Court.

SECTION 6-102.11**RESERVED.**

(PR19-019, 6/27/02)

SECTION 6-102.12

CHILD SUPPORT COMPUTATION FORM.

A. A child support computation form shall be signed by a Judge and incorporated as a part of all orders which establish or modify a child support obligation.

B. Any forms specified in this Title shall be promulgated by the Supreme Court.
(PR19-019, 6/27/02)

SECTION 6-102.13

CHILDREN NOT OTHERWISE CONSIDERED.

A. Any parent that has child support calculated may submit a child support calculation for any child not otherwise considered in the calculation of child support, provided such parent is, in fact, the lawful parent of such child and such parent actually supports the child to the extent identified in the child support calculation form.

B. The Court may consider any and all support provided to such child in determining the Child Support calculation and in its discretion may deduct the child support attributed to such parent in the same manner as for approved child support deductions.

**ARTICLE C
MARRIAGE CEREMONIES**

Section 6-103.1	Title.
Section 6-103.2	Definition of Marriage.
Section 6-103.3	Consanguinity.
Section 6-103.4	Persons Having Capacity to Marry.
Section 6-103.5	Marriage Between Persons of Same Gender Not Recognized.
Section 6-103.6	Marriage License Requirement.
Section 6-103.7	Issuance and Validity of Marriage License.
Section 6-103.8	Contents of License; Time of Return.
Section 6-103.9	Performance or Solemnization of Marriages; Witnesses.
Section 6-103.10	Endorsement and Return of Marriage License.
Section 6-103.11	Record of Application, License and Certificate; Book.
Section 6-103.12	Additional Evidence to Determine Legal Capacity Before Issuance of Marriage License.
Section 6-103.13	Penalty for Solemnizing Unlawful Marriage.
Section 6-103.14	Unlawfully Issuing Marriage License, Concealing Record or Performing Marriage Ceremony; Penalty.
Section 6-103.15	Unlawful Solicitation Of Performance of Marriage Ceremony.
Section 6-103.16	Punishment for Violation of Act.
Section 6-103.17	Unlawful Sale of Papers Relating to Marriage Licenses; Penalty.
Section 6-103.18	Injunction Restraining Violation of Act.

SECTION 6-103.1 **TITLE**

This Act shall be known as the "Marriage Ceremony Act of 2005" ("Act").

SECTION 6-103.2 **DEFINITION OF MARRIAGE.**

Marriage is a personal relation between a man and a woman arising out of a civil contract to which the consent of parties legally competent of contracting and of entering into it is necessary, and the marriage relation shall only be entered into, maintained or abrogated as provided by law.

SECTION 6-103.3 **CONSANGUINITY.**

Marriages between ancestors and descendants of any degree, of a stepfather with a stepdaughter, stepmother with stepson, between uncles and nieces, aunts and nephews, except in cases where such relationship is only by marriage, between brothers and sisters of the half as well as the whole blood, and first cousins are declared to be incestuous, illegal and void, and are

expressly prohibited. Provided, that any marriage of first cousins performed in another jurisdiction authorizing such marriages, which is otherwise legal, is hereby recognized as valid and binding in the Chickasaw Nation as of the date of such marriage.

SECTION 6-103.4

PERSONS HAVING CAPACITY TO MARRY.

A. **Native American; Residence.** At least one (1) of the parties applying for a marriage license must be Native American residing within the territorial jurisdiction of the Chickasaw Nation for at least six (6) months immediately preceding.

B. **Age Limit.** Any unmarried person who is at least eighteen (18) years of age and not otherwise disqualified is capable of contracting and consenting to marriage with a person of the opposite sex.

C. **Exceptions to Age Limit.**

1. Except as otherwise provided by this Subsection B, no person under the age of eighteen (18) years shall enter into the marriage relation, nor shall any license issue therefor, except:

 a. upon the consent and authority expressly given by the parent or guardian of such underage applicant in the presence of the authority issuing such license;

 b. upon the written consent of the parent or guardian of such underage applicant executed and acknowledged in person before a Judge of the District Court or the Clerk of the District Court;

 c. if the parent or guardian resides outside of the Chickasaw Nation, upon the written consent of the parent or guardian executed before a judge or clerk of a court of record. The executed foreign consent shall be duly authenticated in the same manner as proof of documents from foreign jurisdictions;

 d. if the certificate of a duly licensed medical doctor or osteopath, acknowledged in the manner provided by law for the acknowledgment of deeds, and stating that such parent or guardian is unable by reason of health or incapacity to be present in person, is presented to the Clerk of the District Court, upon the written consent of the parent or guardian, acknowledged in the same manner as the accompanying medical certificate;

e. if the parent or guardian is on active duty with the Armed Forces of the United States, upon the written permission of the parent or guardian, acknowledged in the manner provided by law for acknowledgment of deeds by military personnel authorized to administer oaths. Such permission shall be presented to the Clerk of the District Court, accompanied by a certificate executed by a commissioned officer in command of the applicant, to the effect that the parent or guardian is on active duty in the Armed Forces of the United States; or

f. upon affidavit of three (3) reputable persons stating that both parents of the minor are deceased, or mentally incompetent, or their whereabouts are unknown to the minor, and that no guardian has theretofore been appointed for the minor. The Judge of the District Court may in his discretion consent to the marriage in the same manner as in all cases in which consent may be given by a parent or guardian.

2. Every person under the age of sixteen (16) years is expressly forbidden and prohibited from entering into the marriage relation except when authorized by the Court:

a. in settlement of a suit for seduction or paternity; or

b. if the unmarried female is pregnant, or has given birth to an illegitimate child and at least one (1) parent of each minor, or the guardian or custodian of such child, is present before the Court and has an opportunity to present evidence in the event such parent, guardian, or custodian objects to the issuance of a marriage license. If they are not present the parent, guardian, or custodian may be given notice of the hearing at the discretion of the Court.

3. A parent or a guardian of any child under the age of eighteen (18) years who is in the custody of the Indian Child Welfare Department, Oklahoma Department of Human Services or the Oklahoma Department of Juvenile Justice shall not be eligible to consent to the marriage of such minor child as required by the provisions of this Subsection B.

4. Any certificate or written permission required by this Subsection B shall be retained by the Clerk of the District Court.

D. No marriage may be authorized when such marriage would be incestuous under this Act.

SECTION 6-103.5

**MARRIAGE BETWEEN PERSONS OF SAME GENDER
NOT RECOGNIZED.**

A marriage between persons of the same gender performed in another jurisdiction shall not be recognized as valid and binding in the Chickasaw Nation as of the date of the marriage.

SECTION 6-103.6

MARRIAGE LICENSE REQUIREMENT.

No person shall enter into or contract the marriage relation, nor shall any person perform or solemnize the ceremony of any marriage in the Chickasaw Nation without a license being first issued by the Clerk of the District Court authorizing the marriage between the persons named in such license.

SECTION 6-103.7

ISSUANCE AND VALIDITY OF MARRIAGE LICENSE.

A. Persons desiring to be married under Chickasaw law shall submit an application in writing signed and sworn to in person before the Clerk of the District Court by both of the parties setting forth:

1. each party's place of residence;
2. each party's full name and age as the same appear upon a certified copy of birth certificate, a current motor vehicle operator's, chauffeur's or commercial license, a current voter's registration certificate, a current passport or visa, or any other certificate, license or document issued by or existing pursuant to the laws of any nation or of any state or other governmental subdivision thereof accepted as proof of identity and age; and
3. that the parties are not disqualified from or incapable of entering into the marriage relation.

B. Upon application pursuant to this Section and the payment of fees as provided in Section 5-103.18 of the Chickasaw Nation Code, if the Clerk of the District Court is satisfied of the truth and sufficiency of such application and that there is no legal impediment to such marriage, the Clerk shall issue the license authorizing the marriage.

C. In the event that one (1) or both of the parties are under legal age and a parent or guardian of the underage party or other authorized person has not signed the waiver as provided for in this Act, the application shall have been on file in the Court Clerk's office for a period of not less than seventy-two (72) hours prior to issuance of the marriage license.

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D. The marriage license shall be valid in any district and county within the Chickasaw Nation.

E. The provisions hereof are mandatory and not directory except under the circumstances set out in the provisions of Section 103.4.

SECTION 6-103.8

CONTENTS OF LICENSE; TIME OF RETURN.

The license herein provided for shall contain the date of its issuance, name of the Court, the full names of the persons to be married thereunder, their ages, places of residence, and social security numbers, if any, and shall be directed to any person authorized by law to perform and solemnize the marriage ceremony, and shall fix the time of the return thereof, which shall not be more than thirty (30) days from the date of its issuance, and shall contain a blank certificate to be made out by the person solemnizing or performing the marriage ceremony thereunder.

SECTION 6-103.9

PERFORMANCE OR SOLEMNIZATION OF MARRIAGES; WITNESSES.

A. All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses, by a Judge or Justice of any court of the Chickasaw Nation, or an ordained or authorized preacher or minister of the Gospel, priest or other ecclesiastical dignitary of any denomination who has been duly ordained or authorized by the church to which he or she belongs to preach the Gospel, or a rabbi and who is at least eighteen (18) years of age.

B. Filing of Credentials by Persons Performing Marriage Ceremonies.

1. A Judge or Justice shall place his or her order of appointment or election on file with the office of the Clerk of the District Court. Eligibility under this Act shall be in effect only for the time period of such appointment or election.

2. A preacher, minister, priest, rabbi, or ecclesiastical dignitary shall have filed, in the office of the Court Clerk, a copy of the credentials or authority from his or her church or synagogue authorizing him or her to solemnize marriages.

3. The filing by Judges, Justices, preachers, ministers, priests, rabbis or ecclesiastical dignitaries shall be effective in and for all districts and counties of the Chickasaw Nation and no fee shall be charged for such filing.

C. No person herein authorized to perform or solemnize a marriage ceremony shall do so unless the license issued therefor be first delivered into his or her possession nor unless he

or she has good reason to believe the persons presenting themselves before him or her for marriage are the identical persons named in the license, and for whose marriage the same was issued, and that there is no legal objection or impediment to such marriage.

D. Marriages between persons belonging to the society called Friends, or Quakers, the spiritual assembly of the Baha'is, or the Church of Jesus Christ of Latter Day Saints, which have no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society, church, or assembly.

SECTION 6-103.10

**ENDORSEMENT AND RETURN OF MARRIAGE
LICENSE.**

The person performing or solemnizing the marriage ceremony shall immediately upon the completion thereof endorse upon the license authorizing the marriage his name; official or clerical designation; the court of which he is Judge or Justice or the congregation or body of which he is pastor, preacher, minister, priest, rabbi or dignitary, provided, that the authority to perform or solemnize marriages shall be coextensive with the congregation or body of which he is pastor, preacher, minister, priest, rabbi or dignitary; the town or city and county where the same is located; and signed by him with his official or clerical designation. The witnesses to the ceremony shall endorse the license authorizing the marriage with their names and post office addresses. The license with such certificate thereon shall be transmitted without delay to the Clerk of the District Court. Provided that all marriages solemnized among the society called Friends, or Quakers, the spiritual assembly of the Baha'is, or the Church of Jesus Christ of Latter Day Saints, in the form heretofore practiced and in use in their meetings shall be good and valid. One person chosen by such society, church or assembly shall be responsible for completing the certification of marriage pursuant to this Act in the same manner as a minister or other person authorized to perform marriages. Such person shall be chosen by the society, church or assembly for this purpose.

SECTION 6-103.11

**RECORD OF APPLICATION, LICENSE AND
CERTIFICATE; BOOK.**

The Clerk of the District Court shall make a complete record of the application, license, and certificate thereon, in connected form, each subjoining the other on an optical disc, computer file, microfilm, microfiche, or in a book kept by the Clerk for that purpose, properly indexed; and the record of the license shall be made before it is delivered to the person procuring the same, and the record of the certificate shall be made upon the return of the license; provided, that all records pertaining to the issuance of such license shall be open to public inspection during office hours; provided further, that after recording of the original license and completed certificate as hereinbefore required, it shall be returned to the persons to whom the same was issued, with the

issuing officer's certificate on the back thereof showing the book and page where the same has been recorded.

SECTION 6-103.12

**ADDITIONAL EVIDENCE TO DETERMINE LEGAL
CAPACITY BEFORE ISSUANCE OF MARRIAGE
LICENSE.**

If the Clerk of the District Court shall be in doubt of the legal capacity of the parties for whose marriage a license is sought, to enter into the marriage relation, the Clerk shall require additional evidence to that contained in the application, and may swear and examine witnesses or require affidavits in proof of the legality of such marriage, and unless satisfied of the legality thereof, he shall not issue a license therefor.

SECTION 6-103.13

PENALTY FOR SOLEMNIZING UNLAWFUL MARRIAGE.

Any minister of the Gospel, or other person authorized to solemnize the rites of matrimony within the Chickasaw Nation, who shall knowingly solemnize the rites of matrimony between persons prohibited by this Act from intermarrying shall be deemed guilty of a violation of this Act and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars (\$500) and imprisonment up to one (1) year.

SECTION 6-103.14

**UNLAWFULLY ISSUING MARRIAGE LICENSE,
CONCEALING RECORD OR PERFORMING MARRIAGE
CEREMONY; PENALTY.**

Any Clerk of the District Court knowingly issuing any marriage license, or concealing any record thereof, contrary to the provisions of this Act, or any person knowingly performing or solemnizing the marriage ceremony contrary to any of the provisions of this Act, shall be deemed guilty of a violation of this Act and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment not less than thirty (30) days nor more than one (1) year or by both such fine and imprisonment.

SECTION 6-103.15

**UNLAWFUL SOLICITATION OF PERFORMANCE OF
MARRIAGE CEREMONY.**

It shall be unlawful for any person to solicit directly or indirectly within any the courthouse or its premises or grounds for himself or for and on behalf of any minister of the Gospel or other person, the performance of a marriage ceremony.

SECTION 6-103.16

PUNISHMENT FOR VIOLATION OF ACT.

Any person violating this Act in ways other than those stated above shall be punished by a fine not to exceed twenty five dollars (\$25) for the first conviction, and for any second or subsequent conviction by a fine of not less than twenty five dollars (\$25) nor more than one hundred dollars (\$100).

SECTION 6-103.17

**UNLAWFUL SALE OF PAPERS RELATING TO
MARRIAGE LICENSES; PENALTY.**

It shall be unlawful for the Court Clerk to sell, offer for sale, or permit the sale of any paper or instrument relating, directly or indirectly, to marriage licenses issued from the office of said Court Clerk except the license herein. Provided, any person violating the provisions of this Section shall be guilty of a violation of this Act and upon conviction shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), or by imprisonment for not less than five (5) days nor more than ten (10) days, or by both such fine and imprisonment.

SECTION 6-103.18

INJUNCTION RESTRAINING VIOLATION OF ACT.

In addition to the penalties provided in this Act for violations of this Act, a cause of action shall exist in favor of any Chickasaw citizen, or in favor of the Chickasaw Nation, to apply to the District Court for an injunction restraining the violation of this Act.

**CHAPTER 2
INDIAN CHILD WELFARE**

Section 6-201	Indian Child Welfare.
Section 6-202	Qualification of Chickasaw Foster Parents.
Section 6-203	Maintenance of Lists.
Section 6-204	Application and Funding for Child Welfare Services.

SECTION 6-201 **INDIAN CHILD WELFARE.**

The Office of Indian Child Welfare is hereby established for the Nation. (TL 3-003, 12/20/85)

SECTION 6-202 **QUALIFICATION OF CHICKASAW FOSTER PARENTS.**

A. In the administration of the Indian Child Welfare Act within the jurisdiction of the Chickasaw Nation and its designated Courts, it shall be unlawful to use a person's age as one of the criteria for such person or persons to be a foster parent or an adoptive parent, unless such person's age is an obvious and apparent factor regarding such person's physical and emotional fitness for foster or adoptive parenting. (PR12-05, 11/18/94)

B. The Coordinator of the Indian Child Welfare Program of the Nation shall identify and establish a list of legally qualified foster parents, meeting the qualifications required, in order to place Indian children in Indian homes. (TL 3-003, 12/20/85)

SECTION 6-203 **MAINTENANCE OF LISTS.**

The Coordinator of the Indian Child Welfare Program shall provide the Court of the Nation with a complete list of approved families qualified for the Foster Parent Program. There shall also be prepared a list of Indian children by name, age, sex and a short background history including the reasons for their being sent to a foster home. All lists must be updated every thirty (30) days. (TL 3-003, 12/20/85)

SECTION 6-204 **APPLICATION AND FUNDING FOR CHILD WELFARE SERVICES.**

The Legislature authorizes and approves the Nation's application for and administration of funding for the purpose of improving child welfare services to Indian children and families from the Bureau of Indian Affairs, as provided by the Indian Child Welfare Act, Public Law 95-608. (GR 8-14, 12/21/90; GR 8-75, 6/21/91)

**CHAPTER 3
JUVENILE PROCEDURES**

**ARTICLE A
GENERAL PROVISIONS**

Section 6-301.1	Purpose.
Section 6-301.2	Definitions.
Section 6-301.3	Jurisdiction.
Section 6-301.4	Indian Child Welfare Act Transfers from Another Court.
Section 6-301.5	Child Welfare Transfers to Tribal or State Court.
Section 6-301.6	Notice of Legal Rights.
Section 6-301.7	Prosecutor Duties.
Section 6-301.8	Jury Trials.
Section 6-301.9	Procedure.
Section 6-301.10	Hearings.
Section 6-301.11	Social Study and Other Reports.
Section 6-301.12	Effect of Proceedings.
Section 6-301.13	Reserved.
Section 6-301.14	Inspection of Court Records.
Section 6-301.15	Expungement of Records.
Section 6-301.16	Law Enforcement Records.
Section 6-301.17	Department Records.
Section 6-301.18	Identity Confidential.
Section 6-301.19	Search Warrants for the Protection of Children.
Section 6-301.20	Issuance and Return of Search Warrant.
Section 6-301.21	Expiration of Search Warrant.
Section 6-301.22	Exclusion of Certain Statements by Alleged Delinquent.
Section 6-301.23	Appeals.
Section 6-301.24	Voluntary Foster Care Authorized.

SECTION 6-301.1 **PURPOSE.**

A. The purposes of these provisions are to:

1. secure for each Child subject to this Chapter such care and guidance, preferably in his own home, as will serve his welfare and the interests of the Chickasaw Nation and society in general;
2. preserve and strengthen the ties between the Child and the Chickasaw Nation whenever possible;

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3. preserve and strengthen family ties whenever possible, and to strengthen and improve the home and its environment when necessary;
4. remove a Child from the custody of his Parents and Traditional Custodians only when his welfare and safety or the protection of the public would otherwise be endangered; and
5. secure for any Child removed from the custody of his Parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of the Chickasaw Nation and society in general.

B. In order to carry out these purposes, these provisions shall be liberally construed. These provisions shall supersede any conflicting provisions found in Title 25, Code of Federal Regulations.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

NOTE: Solicitor's Office recommended removing Chapter 14, Sections 5-1401 thru 5-1408.45, from Title 5 of the Criminal Code and placing it in a more appropriate Title. Those Sections were moved to Title 6, Chapter 3, Articles A thru G.

SECTION 6-301.2 DEFINITIONS.

Unless the context otherwise requires, as used in this Chapter, the term:

1. "Adjudicatory Hearing" means a hearing to determine whether the allegations of a petition alleging a Child to be Neglected, in need of Supervision, or Delinquent filed pursuant to this Chapter are supported by the evidence.
2. "Adult" means a person eighteen (18) years of age or over, except that any person alleged to have committed a delinquent act before he became eighteen (18) years of age shall be considered a Child under this Chapter for the purpose of adjudication and disposition of the delinquent act.
3. "Aunt" means a person who, by blood or marriage, is:
 - a. a female sibling of the biological Parents;
 - b. a female Child of a Grandparent; or

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c. any other female person, who, by virtue of an adoption, either of themselves or of a member of their family pursuant to the laws of any Indian tribe or state would come within the terms of Subparagraphs a., b., or c. of this Subsection.

4. "Brother" means:

a. any male sibling; or

b. any other male person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws of any Indian tribe or state, would hold the relationship of sibling with the person in question.

5. "Brother-in-law" means the husband of a Sister by blood or marriage.

6. "Child" or "Indian Child" means an unmarried person who is under age eighteen (18) (plural, "Children" or "Indian Children") and is either a) a member of an Indian tribe or b) is eligible for membership in an Indian tribe and is the biological Child of a member of an Indian tribe. For purposes of this text, Child will be interpreted to mean Indian Child.

7. "Child Care Center" means an institution or facility designed for the care of Children licensed or approved pursuant to Chickasaw law, or, if outside the Chickasaw jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.

8. "Child in Need of Supervision" means any Child:

a. who has repeatedly disobeyed reasonable and lawful commands or directives of his Parent, legal guardian, or other custodian;

b. who is willfully and voluntarily absent from his home without the consent of his Parent, guardian, or legal custodian for a substantial period of time, or without intent to return; or

c. who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school in violation of law.

9. "Child Placement Agency" means an agency designed for the care or placement of Children licensed or approved pursuant to Chickasaw law, or, if outside the Chickasaw jurisdiction in which such facility is physically located or both.

10. "Commit" means to transfer legal custody.

11. "Court" or "Children's Court" means the Courts of the Chickasaw Nation, Children's Court of the Court of Indian Offenses, Children's or Juvenile Court established

for other Indian tribes or a state Children's or juvenile court as is appropriate from the context.

12. "Cousin" means the Child of an Aunt or Uncle.

13. "Custody" means Guardianship of the Person.

14. "Delinquent Child" means a Child who:

a. has violated any federal, Chickasaw, or state law excepting traffic statutes or ordinances, hunting or fishing statutes or ordinances, or any lawful order of the Court made pursuant to this Chapter; or

b. has habitually violated any traffic, hunting, or fishing statutes or ordinances, or lawful orders of the Court made under this Chapter.

15. "Department" means the Chickasaw Nation Social Services Department.

16. "Deprivation of Custody" means the transfer of legal Custody by the Court from a Parent or a previous legal custodian to another person, agency, or institution.

17. "Detention" means the temporary care of a Child who requires secure Custody in physically restricting facilities pending court disposition or a court order for placement or Commitment.

18. "Dispositional Hearing" means a hearing, held after an adjudicating hearing has found a Child to be, neglected, in need of Supervision, or Delinquent in which the Court must determine what treatment should be ordered for the family and the Child, and what placement of the Child should be made during the period of treatment.

19. "Family Care Home" or "Foster Home" means a facility for the care of not more than ten (10) Children in a family type setting, licensed or approved pursuant to Chickasaw law, or, if outside the Chickasaw jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.

20. "Group Care Facilities" means places other than Family Care Homes or Child Care Centers providing care for small groups of Children.

21. "Grandparent" means:

- a. a biological Grandparent or great-Grandparent;
- b. the Brothers and Sisters of a biological Grandparent, and their spouses; and
- c. any other person, who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws of an Indian tribe or state, would come within the terms of Subparagraphs a or b of this Subsection.

22. "Guardianship of the Person" means legal Custody or the duty and authority vested by law to make major decisions affecting a Child including, but not limited to:

- a. the authority to consent to marriage, enlistment in the armed forces, and to extraordinary medical and surgical treatment;
- b. the authority to represent a Child in legal actions and to make other decisions of substantial legal significance concerning a Child;
- c. the authority to consent to the adoption of a Child when the Parent-Child relationship has been terminated by judicial decree or the death of the Parents;
- d. the rights and responsibilities of the physical and legal care, Custody, and control of a Child when legal Custody has not been vested in another person, agency or institution;
- e. the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the Child; and
- f. Guardianship of the Person of a Child, or legal Custody of a Child, may be taken from its Parents only by court action.

23. "Halfway House" means Group Care Facilities for Children who have been placed on probation or parole by virtue of being adjudicated Delinquent, or in need of Supervision under this Chapter.

24. "Neglected Child" or "Dependent Child" means a Child:

- a. whose Parent, guardian, or legal custodian has subjected him to mistreatment or abuse, or whose Parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the Child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;
- b. who lacks proper parental care through the actions or omissions of the Parent, guardian, or legal custodian;
- c. whose environment is injurious to his welfare;
- d. whose Parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well-being, whether because of the fault of the Parent, guardian, or legal custodian, or because the Parent, guardian or legal custodian does not have the ability or resources to provide for the Child;
- e. who is homeless, without proper care, or not domiciled with his Parent, guardian, or legal custodian, due to, or without the fault of his Parent, guardian, or legal custodian; or
- f. whose Parent, guardian, or legal custodian has abandoned him without apparent intent to return, or who has placed him informally with any other person, and has not contributed to the support of the Child or established personal contact with the Child for a period in excess of six months.

25. "Nephew" means the male Child of a Brother, Sister, Brother-in-law, or Sister-in-law, whether by blood, marriage, or adoption.

26. "Niece" means the female Child of a Brother, Sister, Brother-in-law, or Sister-in-law, whether by blood, marriage, or adoption.

27. "Parent" means either a natural Parent or a Parent by adoption. Parent does not include an unwed father unless he has acknowledged paternity of the Child orally to two (2) or more disinterested parties or in writing under oath unless paternity has been established by judicial action.

28. "Protective Supervision" means a legal status created by court order under which the Child is permitted to remain in his own home under the supervision of the

Court through the Department during the period in which treatment is being provided to the family by the Department or other agencies designated by the Court.

29. "Residual Parental Rights and Responsibilities" means those rights and responsibilities remaining with the Parent after legal Custody, or Guardianship of the Person of said Child has been vested in another person, agency, or institution, but where parental rights have not been terminated, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the Child, the right to determine the Child's religious affiliation, and the right to reasonable visitation with the Child unless restricted by the Court.

30. "Shelter" means a facility for the temporary care of a Child in physically non-restricting facilities pending court disposition, or execution of a court order for emergency or temporary placement.

31. "Stepparent" means a person married to a biological Parent, but who is not a biological Parent of the Child.

32. "Sister" means:

a. any female sibling; or

b. any other female person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to this Chapter or the laws of any Indian tribe or state, would hold the relationship of sibling with the person in question.

33. "Sister-in-law" means the wife of a Brother by blood or marriage.

34. "Termination of Parental Rights" or "Termination of the Parent-child Legal Relationship" means the permanent elimination by court order of all parental rights and duties, including residual parental rights and duties, but not including the Child's right to inherit from the Parent whose rights have been terminated.

35. "Traditional Custodian" means those relatives and friends of the Child other than the Parents, who, by force of the traditions, customs, and common law of the Chickasaw Nation or of the family, have accepted the rights, duties, and responsibilities of assisting the Parents in rearing the Child and providing for its support.

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36. "Transfer Proceeding" means any proceeding in the Court to grant, accept, or decline transfer of any Children's case from or to the courts of any Indian tribe or state authorized by tribal, federal, or state law.

37. "Uncle" means a person who, by blood or marriage, is:

- a. a male sibling of the biological Parents;
- b. a male first Cousin of the biological Parents;
- c. a male Child of a Grandparent; or
- d. Any other male person, who, by virtue of an adoption, either of themselves or of a member of their family pursuant to the laws of any Indian tribe or state would come within the terms of subparagraphs a, b or c of this

Subsection.

(TL14-002, 4/18/97; PR15-030, 9/23/98; PR21-003, 11/21/03)

SECTION 6-301.3

JURISDICTION.

A. Except as otherwise provided by law, the Court shall have exclusive jurisdiction over Indian Children domiciled in Indian country in the Chickasaw Nation in proceedings listed below unless such jurisdiction is otherwise vested in the state by existing Federal Law. In such an instance, the Chickasaw Nation will have concurrent jurisdiction. Where an Indian Child is a ward of a tribal Court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child. The Court will have concurrent jurisdiction over proceedings involving an Indian Child who does not reside and is not domiciled within Indian Country in the Chickasaw Nation:

- 1. concerning any Child in Need of Supervision;
- 2. concerning any Child who is Delinquent, Neglected or Dependent;
- 3. concerning any Transfer Proceeding to or from a Court of another sovereign in a Children's case;
- 4. to determine the legal Custody of any Child or to appoint a guardian of the person or legal custodian of any Child who comes within the Court's jurisdiction;
- 5. for the issuance of order of support of Children;

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6. to determine the parentage of a Child and to make an order of support in connection therewith;

7. for the adoption of a person of any age;

8. for judicial consent to the marriage, employment or enlistment of a Child, when such consent is required by law; and

9. for the treatment of Commitment of a mentally ill or developmentally disabled Child who comes within the Court's jurisdiction.

B. The Court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any Child concerning whom a petition has been filed prior to adjudication or disposition of his case.

C. Nothing in this Section shall deprive the Court of jurisdiction to appoint a guardian for a Child nor of jurisdiction to determine the legal Custody of a Child upon writ of habeas corpus or when the question of legal Custody is incidental to the determination of a cause in the Court.

D. Where a Custody award has been made in the Court in a dissolution of marriage action or another proceeding, the Court may take jurisdiction in a case involving the same Child if he is Dependent or Neglected or otherwise comes within the jurisdiction set forth herein.
(TL14-002, 4/18/97)

SECTION 6-301.4

INDIAN CHILD WELFARE ACT TRANSFERS FROM ANOTHER COURT.

A. Pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911 B., any state court may transfer to the Court herein any proceeding for the foster care placement of, or Termination of parental rights to, any Indian Child who is a member of, or eligible for membership in the Chickasaw Nation, if the Court finds that the transfer would not be detrimental to the best interests of the Child. These provisions shall also apply to transfers from other tribal courts where an Indian Child is a member of or eligible for membership in the Chickasaw Nation.

B. The Court shall determine whether the transfer to the Chickasaw Nation's jurisdiction would be detrimental to the best interest of the Child in a transfer hearing initiated by the Chickasaw Nation after the order of transfer is received by the Court Clerk. In making such determination, the Court may consider:

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1. whether the Child or its family will be in need of special services for physical or mental disease or defect which the tribe and its resources are unable to adequately provide;

2. if transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court should decline to accept the transfer until after the adjudication is complete; and

3. any other matters which may adversely affect the Chickasaw Nation's ability to provide treatment or necessary services to the family.

C. A court transferring a case to the Chickasaw Nation's jurisdiction under Subsection A of this Section shall transmit all documents and legal and social records, or certified copies thereof, to the Court, which shall proceed with the case as if the petition has been originally filed or the adjudication had been originally made in this Court. Transfer cases shall be assigned a court case number as in other cases.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-301.5

CHILD WELFARE TRANSFERS TO TRIBAL OR STATE COURT.

A. The Court is authorized to transfer any Children's case arising within the Chickasaw Nation's jurisdiction, said Child not being a member or eligible for membership in the Chickasaw Nation, to the Court of the Child's Indian tribe, or if the Child is a non-Indian, to the courts of the state where the Child is a resident or domiciled, upon the petition of the prosecutor, either Parent, a custodian or guardian, the Child's tribe, or an appropriate official of the Child's state.

B. In making such transfers the Court must consider:

1. the best interests of the Child;

2. any special needs or mental or physical disease or defects of the Child and family and the ability of the receiving jurisdiction to meet those needs;

3. if transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction;

4. emotional, cultural, and social ties of the Child and its family; and

5. the likelihood that the same Child and family would return to the Chickasaw Nation jurisdiction within a reasonable time and come before the Court again.

C. Upon entering an order transferring a case as provided in this Section, the Court shall serve a certified copy of the Order of Transfer, the legal case file, and any social or police reports concerning the Child's case to the Court Clerk of the receiving jurisdiction by certified mail, return receipt requested. The Court may retain physical Custody of the Child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order or notice, may close the case file and dismiss the case subject to any necessary order for the protection of the Child until completion of physical transfer to the receiving jurisdiction. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-301.6

NOTICE OF LEGAL RIGHTS.

A. At his first appearance before the Court, the Child and his Parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:

1. their right to a jury trial upon demand where available;
2. their right to be represented by an attorney, at their own expense, at every stage of the proceeding;
3. their right to see, hear, and cross-examine all witnesses against them;
4. their right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them; and
5. in juvenile delinquency proceedings, the right of the Child not to be compelled to testify against himself.

B. If the Child or his Parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the Court in proceedings wherein the Chickasaw Nation is a party and Termination of the Parent-child Legal relationship is stated as a possible remedy in the summons.

C. The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the Child or other parties.

D. If the Child and his Parents, guardian, or other legal custodian were not represented by counsel, the Court shall inform them at the conclusion of the proceedings that

they have the right to file a motion for a new trial and that if such motion is denied, they have the right to appeal.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-301.7

PROSECUTOR DUTIES.

The prosecutor shall represent the Chickasaw Nation in the interest of the Child in all proceedings subject to this Chapter in which the Chickasaw Nation is a party. In proceedings subject to this Chapter in which the Chickasaw Nation is not a party, the prosecutor, upon request of the Court, shall intervene on behalf of the Chickasaw Nation in the interest of the Child and, thereafter, shall act as the guardian *ad litem* of the Child until a successor guardian *ad litem* be duly appointed. (TL14-002, 4/18/97)

SECTION 6-301.8

JURY TRIALS.

A. A Child, his Parent or guardian, or any interested party may demand a trial by a jury or the Court on its own motion may order a jury to try any case:

1. in Adjudicatory Hearings concerning an alleged Delinquent, Neglected Child, or Child in need of Supervision, where termination is stated as a possible disposition in the petition; and

2. in determining the parentage of a Child under this Chapter.

B. Unless a jury is demanded, it shall be deemed to be waived.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-301.9

PROCEDURE.

A. The rules of juvenile procedure herein set forth shall apply in all proceedings under this Chapter. To the extent that any procedure is not specifically set forth herein, the general rules of civil procedure shall apply.

B. In cases involving an allegation of delinquency by means of commission of an offense, the Adjudicatory Hearing shall be held in conformity with the rules of criminal procedure, and the Child shall be entitled to all the rights, privileges, and immunities of an accused in a criminal case.

C. The Court shall have the authority by written court rule not inconsistent with this Chapter or the Civil Procedure Act to provide for any procedure or form necessary for the efficient, orderly, and just resolution of cases under this Chapter. (TL14-002, 4/18/97)

SECTION 6-301.10

HEARINGS.

A. Hearings shall be held before the Court without a jury, except as provided in this Chapter, and may be conducted in an informal manner, except in proceedings brought concerning an alleged Delinquent. The general public shall be excluded unless the Court determines that it is in the best interest of the Child to allow the general public to attend. The Court shall admit only such persons as have an interest in the case or the work of the Court, including persons whom the Parents or guardian wish to be present unless an order has been entered authorizing the general public to attend. Hearings may be continued from time to time as ordered by the Court.

B. A verbatim record shall be taken of all proceedings which might result in the Deprivation of Custody. A verbatim record shall be made in all other hearings, including any hearing conducted by a referee, unless waived by the parties in the proceeding and so ordered by the Judge or referee.

C. When more than one Child is named in a petition alleging delinquency, need of Supervision, or neglect or dependency, the hearings may be consolidated; or heard separately at any stage of the proceeding in the Court's discretion.

D. Children's cases shall be heard separately from Adult's cases, and the Child or his Parents, guardian, or other custodian may be heard separately when deemed necessary by the Court.

E. The name, picture, place of residence, or identity of any Child, Parent, guardian, other custodian, or person appearing as a witness in Children's proceedings under this Chapter shall not be published in any newspaper or in any other publication nor given any other publicity unless, for good cause, it is specifically permitted by order of the Court. Any person who violates the provisions of this Subsection (6) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-301.11

SOCIAL STUDY AND OTHER REPORTS.

A. Unless waived by the Court, the Department or other agency designated by the Court shall make a social study and report in writing in all Children's cases except:

1. if the allegations of a petition filed under Section 6-301.3 are denied, the study shall not be made until the Court has entered an order of adjudication; and

2. the study and investigation in all adoptions shall be made as provided in the provisions relating to adoptions.

B. The general rules of evidence shall not apply for the purpose of determining proper disposition of a Child and written reports and other material relating to the Child's mental, physical, and social history may be received and considered by the Court along with other evidence. However, the Court, if so requested by the Child, his Parent or guardian or other interested party, shall require that the person who wrote the report or prepared the material, if available, appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the Child, his Parent or guardian, or other party in the proceedings so requires.

C. The Court shall inform the Child, his Parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified in Subsection B of this Section.

(TL14-002, 4/18/97)

SECTION 6-301.12 **EFFECT OF PROCEEDINGS.**

A. No adjudication or disposition in proceedings under Section 6-301.3 shall impose any civil disability upon a Child or disqualify him from any Chickasaw personnel system or military service application or appointment or from holding a Chickasaw Nation office.

B. No adjudication, disposition, or evidence given in proceedings brought under this Chapter shall be admissible against a Child in any criminal or other action or proceedings, except in subsequent proceedings under this Chapter concerning the same Child.

(TL14-002, 4/18/97)

SECTION 6-301.13 **RESERVED.**

(PR16-025, 8/23/99)

SECTION 6-301.14 **INSPECTION OF COURT RECORDS.**

A. Records of court proceedings shall be open to inspection by the Parents or guardian, attorneys and other parties in proceedings before the Court, and to any agency to which legal Custody of the Child has been transferred, except records of court proceedings in formal adoptions and formal relinquishment shall be confidential and open to inspection only by court order.

B. With consent of the Court, records of court proceedings may be inspected by the Child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in formal relinquishment and formal adoption proceedings.

C. Probation counselors' records and all other reports of social and clinical studies shall not be open to inspection, except by consent of the Court.
(TL14-002, 4/18/97)

SECTION 6-301.15

EXPUNGEMENT OF RECORDS.

A. Any person who has been adjudicated Delinquent or in need of Supervision, who was taken into Custody on an allegation of delinquency or need of Supervision, or who was the subject of a petition for delinquency or need of Supervision later may petition the Court for the expungement of his record and shall be so informed at the time of adjudication, or the Court, on its own motion may initiate expungement proceedings concerning the record of any Child who has been under the jurisdiction of the Court. Such petition shall be filed or such court order entered no sooner than two (2) years after the date of termination of the Court's jurisdiction over the person. Only by stipulation of all parties involved may expungement be applied for prior to the expiration of two (2) years from the date of termination of the Court's Supervision under an informal adjustment.

B. Upon the filing of a petition for expungement or entering of a court order, the Court shall set a date for hearing and shall notify the prosecutor and anyone else whom the Court has reason to believe may have relevant information related to the expungement of the record, including all agencies or officials known to have relevant files relating to the individual.

C. The Court shall order sealed all records in the petitioner's case in the Custody of the Court and any records in the Custody of any other agency or official, if at the hearing the Court finds that:

1. the subject of the hearing has not been convicted of a felony, or a misdemeanor involving moral turpitude and has not been adjudicated under this Chapter since the termination of the Court's jurisdiction;
2. no proceeding concerning a felony, or a misdemeanor involving moral turpitude, or a petition under this Chapter is pending or being instituted against him; and
3. the rehabilitation of the person has been attained to the satisfaction of the Court.

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D. Upon entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person, every agency, and the Court may properly reply that no record exists with respect to such person upon any inquiry in the matter.

E. Copies of the order shall be sent to each agency or official named therein.

F. Inspection of the records included in the order may thereafter be permitted by the Court only upon petition by the person who is the subject of such records, and only to those persons named in the petition.

G. In any proceeding alleging delinquency or need of Supervision in which the Court orders the petition dismissed on the merits at adjudication, the Court may order the records expunged. Such order of expungement may be entered without delay upon petition of the Child or any party or upon the Court's own motion.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-301.16

LAW ENFORCEMENT RECORDS.

A. The records of law enforcement officers concerning all Children's cases or Children taken into temporary Custody or issued a summons under the provisions of this Chapter shall be maintained separately from the records of arrest and may not be inspected or disclosed to the public, including the names of Children taken into temporary Custody or issued summons, except:

1. to the victim in each case when the Child is found guilty of a delinquent act;
2. when the Child has escaped from an institution to which he has been confined;
3. by order of the Court;
4. when the Court orders the Child to be held for criminal proceedings;
5. when there has been a criminal conviction and a presentence investigation is being made on an application for probation; or
6. when disclosure is to a Chickasaw Nation, federal or state officer, employee, or agency in their official capacity who shows a bona fide need for the

information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Chickasaw law.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-301.17 **DEPARTMENT RECORDS.**

The records of the Department concerning all Children's cases under the provisions of this Chapter may not be inspected or disclosed to the public, including the names of Children taken into temporary Custody or issued a summons, except:

1. to the victim in each case when the Child is found guilty of a delinquent act;
2. when the Child has escaped from an institution to which he has been Committed;
3. by order of the Court;
4. when the Court orders the Child to be held for criminal proceedings;
5. when there has been a criminal conviction and a presentence investigation is being made on an application for probation; or
6. when the disclosure is to a Chickasaw Nation, federal, or state officer, employee, or agency in their official capacity who show a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Chickasaw law.

(TL14-002, 4/18/97)

SECTION 6-301.18 **IDENTITY CONFIDENTIAL.**

No fingerprint, photograph, name, address, or other information concerning the identity of a Child taken into temporary Custody or issued a summons under the provisions of this Chapter may be transmitted to the Federal Bureau of Investigation or any other person or agency, except a local law enforcement agency when necessary to assist in apprehension or to conduct a current investigation, or when the Court orders the Child to be held for criminal proceedings.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-301.19

SEARCH WARRANTS FOR THE PROTECTION OF CHILDREN.

A. A search warrant may be issued by the Court to search any place for the recovery of any Child within the territorial jurisdiction of the Court believed to be a Delinquent Child, a Child in need of Supervision, or a Neglected or Dependent Child.

B. Such warrant shall be issued only on the conditions that the application for the warrant shall:

1. be in writing and supported by affidavit sworn to or affirmed by the Court;
 2. name or describe with particularity the Child being sought;
 3. state that the Child is believed to be a Delinquent Child, a Child in need of Supervision, or a Neglected or Dependent Child and the reasons upon which such belief is based;
 4. state the address or legal description of the place to be searched; and
 5. state the reasons why it is necessary to proceed pursuant to this Section instead of proceeding by issuance of a summons.
- (TL14-002, 4/18/97)

SECTION 6-301.20

ISSUANCE AND RETURN OF SEARCH WARRANT.

A. If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the Child sought and the place to be searched for the Child.

B. The search warrant shall be directed to any law enforcement officer authorized by law to execute it wherein the place to be searched is located.

C. The warrant shall state the grounds for probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof, and shall be issued in a form substantially similar to other search warrants.

D. The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the Court may so direct.

E. A copy of the warrant, the application therefore, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the Child is to be sought, or if no one is home, a copy shall be left in plain sight within the place searched.

F. If the Child is found, the Child shall be taken into Custody, transported to and placed in the Detention or Shelter facility subject to the conditions of Subsections 6-302.4.C and .D.

G. The warrant shall be returned to the issuing court immediately upon service, and the officer shall subscribe on the warrant his name, the date and time of service, the place where the Child was delivered by him and his fees. A copy shall be delivered to the prosecutor. If the Child was not found, such information should be subscribed on the warrant.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-301.21

EXPIRATION OF SEARCH WARRANT.

A search warrant for the protection of a Child shall be null and void if not served within ten (10) days of the date of issuance and a void warrant should be returned with the reason for non-service subscribed thereon. (TL14-002, 4/18/97)

SECTION 6-301.22

EXCLUSION OF CERTAIN STATEMENTS BY ALLEGED DELINQUENT.

A. No statements or admissions of a Child made as a result of interrogation of the Child by a law enforcement official concerning acts alleged to have been committed by the Child which would constitute a crime if committed by an Adult shall be admissible in evidence against that Child unless all the following occurred:

1. a Parent, guardian, or legal custodian of the Child was present at such interrogation;

2. the Child and his Parent, guardian, or legal custodian were advised of the Child's right to remain silent, and that any statements made by the Child may be used against him in a court of law; and,

3. the Child and his Parent, guardian, or legal custodian were advised that they have the right of the presence of their attorney during interrogation, or the right of the Child to have counsel appointed, at no fee, and present at the time of the interrogation, and, when legal counsel representing the Child is present at such interrogation, such statements or admissions may be admissible in evidence even though the Child's Parent, guardian, or legal custodian was not present.

B. Notwithstanding the provisions of Subsection A of this Section, statements or admissions of a Child shall not be inadmissible in evidence by reason of absence of a Parent, guardian, or legal custodian if the Child is emancipated from the Parent, guardian, or legal custodian or if the Child is a runaway from outside the Court's jurisdiction and is of sufficient age and understanding.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-301.23

APPEALS.

A. An appeal may be taken from any order, decree, or judgment of the Court in the same manner as other civil appeals are taken. Initials shall appear on the record on appeal in place of the name of the Child and respondents. Appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time.

B. The Chickasaw Nation shall have the same right to appeal questions of law in delinquency cases as exists in criminal cases.

(TL14-002, 4/18/97)

SECTION 6-301.24

VOLUNTARY FOSTER CARE AUTHORIZED.

In order to provide better treatment for a family's problems and to better protect Children, the Department is authorized to accept a Child for foster care when the Parent, guardian, or other physical or legal custodian has consented to such foster care in writing before a Judge of the Court whose issuance of a certificate that the terms and conditions and consequences of such consent were fully explained in detail and fully understood in English, or that it was interpreted into a language which was understood.

A consent to foster care placement may be withdrawn by the person giving same, the Parent or other legal guardian having legal Custody, or a Traditional Custodian at any time and the Child shall be returned to the authorized person requesting the Child's release within forty-eight (48) hours.

(TL14-002, 4/18/97)

SECTION 6-301.25

JUVENILE DETENTION; INTERIM USE.

In as much as there is no other tribal-owned and operated juvenile Detention facility in Oklahoma, the Chickasaw Nation pledges that it will utilize the Sac & Fox Nation's Juvenile Detention Facility when available and when the need presents itself. (PR20-007, 4/22/03)

**ARTICLE B
EMERGENCY CUSTODY**

Section 6-302.1	Taking Children into Custody.
Section 6-302.2	Notification of Parents.
Section 6-302.3	Notification of Court Officers.
Section 6-302.4	Release of Detained Child.
Section 6-302.5	Special Release Rule for Major Offenses.
Section 6-302.6	Court Ordered Release.
Section 6-302.7	Extension of Detention Period.
Section 6-302.8	Detention and Shelter.
Section 6-302.9	Emergency Shelter in Child's Home.
Section 6-302.10	Court Ordered Medical Treatment.
Section 6-302.11	Court Ordered Commitment for Observation.

SECTION 6-302.1 **TAKING CHILDREN INTO CUSTODY.**

A. A Child may be taken into temporary Custody by a law enforcement officer without order of the Court when there are reasonable grounds to believe that:

1. he has committed an act which would be a major crime, misdemeanor, or Chickasaw Nation ordinance violation if committed by an Adult; except that wildlife, parks, outdoor recreation, and traffic violations shall be handled as otherwise provided by law;
2. he is abandoned, lost, or seriously endangered in his surroundings or seriously endangers others and immediate removal appears to be necessary for his protection or the protection of others;
3. he has run away or escaped from his Parents, guardian, or legal custodian;
or
4. he has violated the conditions of probation and he is under the continuing jurisdiction of the Court.

B. A Child may be detained temporarily without an order of the Court by an Adult other than a law enforcement officer if the Child has committed or is committing an act in the presence of such Adult which would be a violation of any federal or Chickasaw law, other than a violation of traffic and game and fish laws or regulations, if committed by an Adult. Any person detaining a Child shall notify, without unnecessary delay, a law enforcement officer, who shall assume Custody of said Child.

C. A medical doctor, physician, or similar licensed practitioner of medicine may temporarily detain without an order of the Court a Child brought before him for treatment whom he reasonably suspects to be the victim of Child abuse. Any person detaining a Child due to possible Child abuse shall notify, without unnecessary delay, a law enforcement officer who shall assume Custody of the Child. The law enforcement officer assuming Custody shall have the authority to consent to the admission of the Child to a medical facility and to consent to emergency medical treatment necessary to protect the life or health of the Child from danger of imminent harm. The opinion of two or more licensed medical doctors that treatment for a condition could not reasonably be delayed for a period long enough to contact a Judge for an emergency medical treatment order shall create a presumption that the law enforcement officer properly gave his consent to treatment of the Child.

D. In all other cases, a Child may be taken into Custody only upon an order of the Court.

E. The taking of a Child into temporary Custody under this Section is not an arrest nor does it constitute a police record.
(TL14-002, 4/18/97)

NOTE: Solicitor's Office recommended removing Chapter 14, Sections 5-1401 thru 5-1408.45, from Title 5 of the Criminal Code and placing it in a more appropriate Title. Those Sections were moved to Title 6, Chapter 3, Articles A thru G.

SECTION 6-302.2

NOTIFICATION OF PARENTS.

When a Child is taken into temporary Custody, the officer shall notify a Parent, guardian, or legal custodian without unnecessary delay and inform him that, if the Child is placed in Detention, all parties have a right to a prompt hearing to determine whether the Child is to be detained further. Such notification may be made to a person with whom the Child is residing if a Parent, guardian, or legal custodian cannot be located. If the officer taking the Child into Custody is unable to make such notification, it may be made by any other law enforcement officer, probation counselor, detention center counselor, or jailor in whose physical Custody the Child is placed.
(TL14-002, 4/18/97)

SECTION 6-302.3

NOTIFICATION OF COURT OFFICERS.

Whenever an officer or other person takes a Child to a Detention or Shelter facility, or admits a Child to a medical facility pursuant to Subsection 6-302.1.C, and determines not to release said Child pursuant to Subsection 6-302.4.B, the officer or other person who took the Child to a Detention or Shelter facility shall notify the prosecutor, the Department, and any

agency or persons so designated by the Court at the earliest opportunity that the Child has been taken into Custody and where he has been taken. He shall also promptly file a brief written report with the prosecutor, the Department, and any agency or person so designated by the Court stating the facts which led to the Child being taken into Custody and the reason why the Child was not released. This report shall be filed within twenty four (24) hours excluding Saturdays, Sundays, and legal holidays. (TL14-002, 4/18/97)

SECTION 6-302.4

RELEASE OF DETAINED CHILD.

A. Except as provided in Paragraph B of this Section, a Child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his Parents, guardian, or legal custodian.

B. The Child shall be released to the care of his Parents or other responsible Adult, unless his immediate welfare or the protection of the community requires that he be detained. The Parent or other person to whom the Child is released may be required to sign a written promise, on forms supplied by the Court, to bring the Child to the court at a time set or to be set by the Court.

C. If he is not released as provided in Subsection B of this Section, he shall be taken directly to the Court or to the place of Detention or Shelter approved by the Department and designated by the Court without unnecessary delay unless admitted to a facility for medical treatment pursuant to Subsection 6-302.1.C of this Title 6.

D. No Child shall be detained pursuant to Subsection B for a period exceeding seventy-two (72) hours exclusive of Saturdays, Sundays, and legal holidays without an order of the Court. If no court order is issued within such time, the Child must be released.

E. Notwithstanding the provisions of Subsection D of this Section, a Child who is alleged to be a runaway from another tribal jurisdiction or a state may be held in a Detention facility or jail up to seven (7) days, during which time arrangements shall be made for returning the Child to his Parent, or legal custodian.
(TL14-002, 4/18/97)

SECTION 6-302.5

SPECIAL RELEASE RULE FOR MAJOR OFFENSES.

A. No Child taken to a Detention or Shelter facility without a court order as the result of an allegedly delinquent act which would constitute a major crime or offense otherwise punishable if committed by an Adult shall be released from such facility if a law enforcement agency has requested in writing that a detention hearing be held to determine whether the Child's immediate welfare or the protection of the community requires that he be detained. No such

Child shall thereafter be released from Detention except after a hearing, reasonable advance notice of which has been given to the prosecutor, alleging new circumstances concerning the further Detention of the Child.

B. When, following a Detention hearing as provided for by Subsection A of this Section, the Court orders further Detention of a Child, a petition alleging the Child to be Delinquent shall be filed with the Court without unnecessary delay if one has not been previously filed, and the Child shall be held in Detention pending a hearing on the petition.

C. Nothing herein shall be construed as depriving a Child of the right to bail under the same circumstances as an Adult.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-302.6 **COURT ORDERED RELEASE.**

At any time prior to the filing of a petition and entry of an emergency custody order on that petition, the Court may order the release of any Child, except Children being held pursuant to Section 6-302.1 of this Title 6 from Detention or Shelter care without holding a hearing, either without restriction or upon written promise of the Parent, guardian, or legal custodian to bring the Child to the Court at a time set or to be set by the Court. (TL14-002, 4/18/97)

SECTION 6-302.7 **EXTENSION OF DETENTION PERIOD.**

For good cause shown the Court may extend the time period during which a Child may be detained without a petition and court order for a period not exceeding five (5) working days. Such extension shall be in writing or may be made verbally and reduced to writing within twenty-four (24) hours. (TL14-002, 4/18/97)

SECTION 6-302.8 **DETENTION AND SHELTER.**

A. A Child who must be taken from his home but who does not require physical restriction shall be given temporary care in a Shelter facility approved by the Department and designated by the Court or the Department and shall not be placed in Detention.

B. No Child under the age of fourteen (14) and, except upon the order of the Court, no Child fourteen (14) years of age or older and under sixteen (16) years of age shall be detained in a jail, lockup, or other place used for confinement of Adult offenders or persons charged with crime.

C. A Child fourteen (14) years of age or older shall be detained separately from Adult offenders or persons charged with crime, including any Child ordered by the Court to be held for criminal proceedings.

D. The official in charge of a jail or other facility for the Detention of Adult offenders or persons charged with crime shall inform the Court and prosecutor immediately when a Child who is or appears to be under the age eighteen is received at the facility, except for a Child ordered by the Court to be held for criminal proceedings.
(TL14-002, 4/18/97)

SECTION 6-302.9

EMERGENCY SHELTER IN CHILD'S HOME.

A. Upon application of the Department, the Court may find that it is not necessary to remove a Child from his home to a temporary Shelter facility and may provide temporary shelter in the Child's home by authorizing a representative of the Department, which has emergency caretaker services available, to remain in the Child's home with the Child until a Parent, or legal guardian, or relative of the Child enters the home and expresses willingness and has the apparent ability, as determined by the Department, to resume charge of the Child, but in no event shall such period of time exceed seventy-two (72) hours. In the case of a relative, the relative is to assume charge of the Child until a Parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the Department, to resume charge of the Child.

B. The director of the Department shall designate in writing the representatives of the Department authorized to perform such duties.

C. The court order allowing emergency shelter in the Child's home may be written or oral, provided that if consent is given verbally, the Judge shall reduce the consent given to writing within twenty-four hours.
(TL14-002, 4/18/97)

SECTION 6-302.10

COURT ORDERED MEDICAL TREATMENT.

A. At any time after a Child is taken into Custody with or without a court order and prior to adjudication on the merits:

1. when the Court finds that emergency medical, surgical, or dental treatment is required for a Child in Chickasaw Nation Custody, it may authorize such treatment or care if the Parents, guardian, or legal custodian are not immediately available to give their consent or to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical Custody of the Child pursuant to this Chapter or pursuant to court order.

2. after making a reasonable effort to obtain the consent of the Parent, guardian, or other legal custodian, and after a hearing on notice, the Court may authorize

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or consent to non-emergency medical, surgical, or dental treatment or care for a Child in Chickasaw Nation Custody.

B. After a Child has been adjudicated a ward of the Court, the Court may consent to any necessary emergency, preventive, general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the agency or person having Custody of the Child.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-302.11

COURT ORDERED COMMITMENT FOR OBSERVATION.

If it appears that any Child being held in Detention or Shelter may be mentally ill, developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, the Court shall place the Child in a designated facility approved by the Court for seventy two (72) hour treatment and evaluation. Upon the advice of a physician, the treatment and evaluation period may be extended for a period not exceeding ten (10) days. (TL14-002, 4/18/97)

**ARTICLE C
ADJUDICATION**

Section 6-303.1	Court Intake.
Section 6-303.2	Prosecutor Intake.
Section 6-303.3	Diversion by Contract.
Section 6-303.4	Diversion Contract Inadmissible.
Section 6-303.5	Diversion by Consent Decree.
Section 6-303.6	Limitation on Diversions.
Section 6-303.7	Petition Form.
Section 6-303.8	Petition Contents.
Section 6-303.9	Summons.
Section 6-303.10	When Summons Unnecessary.
Section 6-303.11	Additional Parties to be Summoned.
Section 6-303.12	Service of Summons.
Section 6-303.13	Failure to Appear.
Section 6-303.14	Appointment of Guardian <i>Ad Litem</i> .
Section 6-303.15	Adjudicatory Hearing.
Section 6-303.16	Reserved.
Section 6-303.17	Consent Decree.
Section 6-303.18	Dismissal of Petition.
Section 6-303.19	Sustaining Petition.
Section 6-303.20	Temporary Orders.

SECTION 6-303.1 **COURT INTAKE.**

A. Whenever it appears to a law enforcement officer or any other person that a Child is or appears to be within the Court's jurisdiction, by reason of delinquency, need of Supervision, neglect, or deprivation, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the Department's Child Welfare officer, who shall determine whether the interests of the Child or of the community requires that further action be taken.

B. If the Child Welfare officer determines that the interests of the Child or of the community require that court action be taken, he shall make a request in writing for the prosecutor to file a petition and deliver a copy of the entire case file to the prosecutor.

C. If the Child Welfare officer is unable to determine whether the interests of the Child or of the Chickasaw Nation require that court action be taken from information available to him, he may refer the matter to the Department, a Chickasaw Nation law enforcement agency

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or other agency designated by the Court for a preliminary investigation and recommendations as to filing a petition or as to initiating an informal adjustment pursuant to this Chapter.

D. If the Child Welfare officer determines that the interests of the Child or of the Chickasaw Nation do not require court action, the Department may offer such social services and make such referrals to other agencies as may be feasible to help the family with any problems they may have.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

NOTE: Solicitor's Office recommended removing Chapter 14, Sections 5-1401 thru 5-1408.45, from Title 5 of the Criminal Code and placing it in a more appropriate Title. Those Sections were moved to Title 6, Chapter 3, Articles A thru G.

SECTION 6-303.2

PROSECUTOR INTAKE.

A. Upon receiving a request to file a petition and the accompanying reports and files from the Child Welfare officer, the prosecutor shall review the case file, reports, and any witness statements to determine if there is sufficient evidence which will be admissible under the Federal Rules of Evidence to establish the jurisdiction of the Court over the Child.

B. If the prosecutor determines that there is not sufficient evidence available to establish the jurisdiction of the Court over the Child, he shall, in writing, refuse to file the requested petition, or, in his discretion, may request the Department or Law Enforcement Agency to conduct a further investigation into the matter.

C. If the prosecutor determines that sufficient evidence is available to establish the jurisdiction of the Court over the Child, he shall file a petition concerning the Child.
(TL14-002, 4/18/97)

SECTION 6-303.3

DIVERSION BY CONTRACT.

A. Prior to the filing of a Petition, either the Child Welfare officer or the prosecutor with the consent of the Child Welfare officer may divert any Children's case, except a case subject to Section 6-302.5 or Section 6-303.6 of this Title 6 from the court process.

B. Diversion shall be made by entering into a contract with the Child's Parents, guardian, or other custodian whereby the Parent, guardian or other custodian agrees to undergo specified treatment for the condition noticed, including an agreement to do or refrain from doing certain acts, and the Child Welfare officer or prosecutor on behalf of the Chickasaw Nation agrees not to file a petition in the case so long as the Parent, guardian, or other custodian comply with the contract.

C. Each such contract shall contain the following:

1. the specific facts or allegations, including dates, which gave rise to the condition addressed by the contract;
2. the specific treatment programs the Parents, guardian, or custodian agree to successfully complete and their duration;
3. the specific facts which the Parents, guardian, or custodian agree to do or to refrain from doing;
4. the specific treatment or other social services to be offered by the Chickasaw Nation and accepted by the family;
5. a fixed, limited time for the contract to run not exceeding one (1) year;
6. that the Chickasaw Nation will not file a petition on the subject of the contract for the facts or allegations stated if the Parents, guardian, or custodian comply with the contract terms for the full term of the contract; and
7. that each party has received a copy of the contract.

D. No diversion contract may place physical Custody in any person or agency other than the Parents, guardian, or other legal custodian unless it bears the approval in writing of a Judge of the Court.
(TL14-002, 4/18/97)

SECTION 6-303.4

DIVERSION CONTRACT INADMISSIBLE.

The diversion contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are inadmissible as evidence, except that the Parents, guardian, or custodian may prove the contract and show their compliance with the terms thereof as a defense to a petition filed concerning the matter of the contract. Upon a showing of compliance with the terms of the contract, the Court shall dismiss the petition unless it determines by evidence beyond a reasonable doubt that the Child is in imminent danger of severe physical or mental harm. Proof of the contract shall not be an admission of the Parents, guardian, or custodian of any of the facts alleged therein. (TL14-002, 4/18/97)

SECTION 6-303.5

DIVERSION BY CONSENT DECREE.

A. After filing of a petition, the prosecutor with the consent of the Child Welfare officer, may divert any Children's case, except a case subject to Section 6-302.5 or Section 6-303.6 of this Title 6 from the adjudicatory process with the consent of the respondents and the Court by obtaining Consent Decree if:

1. the Court has informed the Child and his Parents, guardian, or legal custodian of and believes that they understand their rights to:
 - a. deny the allegations of the petition and require the Chickasaw Nation to prove each allegation by admissible evidence;
 - b. confront and cross-examine the witnesses against them and to call witnesses on their own behalf;
 - c. refuse to testify against themselves or each other in delinquency cases;
 - d. a trial by a jury of six persons at the adjudicatory stage, where a jury trial is available;
 - e. be represented by counsel at their own expense at each stage of the proceedings, or to have counsel appointed for them if they cannot afford private counsel.
2. written consent to the decree is obtained from the Parents, guardian, or legal custodian and the Child if of sufficient age and understanding. The consent given for a Consent Decree does not constitute an admission for purposes of adjudication; and
3. the Department has prepared a Treatment Plan for the family to be incorporated into the Consent Decree which distinctly states:
 - a. the specific treatment programs the Parents, guardian, or custodian, or Child agree to successfully complete and their duration;
 - b. the specific treatment or other social services to be offered by the Chickasaw Nation and accepted by the family;
 - c. the specific acts which the Parents, guardian, or custodian or Child agree to do or to refrain from doing; and

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d. the person or agency to be vested with Custody of the Child if the Child cannot remain in its own home, the specific provisions of a, b and c above which must be completed or accomplished for a specific duration before the Child is returned to its own home, and the period of supervision of the Child in its own home.

B. After all parties have consented, the Court shall review the Treatment Plan and if the Court agrees that the plan is satisfactory, shall order all parties by the Consent Decree to abide by the provisions of the Treatment Plan. The Consent Decree shall be monitored and modified as in other dispositions, provided that if the family fails to comply with the Treatment Plan, the Court, on motion of the prosecutor, shall proceed with the adjudication.

C. A Consent Decree shall remain in effect for not exceeding one (1) year, provided that upon notice of hearing the Court may extend the force of the decree for an additional term of one (1) year with the consent of the parties. The adjudication shall be continued during the term of the Consent Decree and thereafter dismissed if the Consent Decree is complied with.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-303.6

LIMITATION ON DIVERSIONS.

No Child shall undergo an informal adjustment process where the Child referred to the Court by any person has had any sustained petition for delinquency in the preceding twelve (12) months or has been handled by informal adjustment for a delinquent act in the preceding twelve (12) months. (TL14-002, 4/18/97)

SECTION 6-303.7

PETITION FORM.

The prosecutor shall sign and file all Child Welfare petitions alleging a Child to be Delinquent, in need of Supervision, or neglected. Such petitions and all subsequent court documents in such proceedings shall contain a heading and title in substantially the following form:

(TL14-002, 4/18/97; PR16-025, 8/23/99)

**IN THE COURT OF INDIAN OFFENSES
CHILDREN'S COURT
CHICKASAW NATION**

The Chickasaw Nation
In The Interest Of:

)
)
)
)

Case No.

Domestic Relations & Families

An Alleged _____ Child,)	
And Concerning)	
)	
_____)	
_____)	
Respondent(s))	

SECTION 6-303.8 **PETITION CONTENTS.**

A. The petition shall set forth plainly the facts which bring the Child within the Court's jurisdiction. If the petition alleges that the Child is Delinquent, it shall cite the law which the Child is alleged to have violated. The petition shall also state the name, age, and residence of the Child and the names and residences of his Parents, guardian, or other legal custodian or of his nearest known relative if no Parent, guardian, or other legal custodian is known.

B. All petitions filed alleging the dependency or neglect of a Child may include the following statement: "Termination of the Parent-child Legal relationship is a possible remedy available if this petition is sustained." Unless such statement is contained in the petition, no Termination of parental rights can be obtained unless, upon the occurrence of new facts after the filing of the petition an amended petition be filed based upon the new facts and containing the above required statement.
(TL14-002, 4/18/97)

SECTION 6-303.9 **SUMMONS.**

Upon filing of a petition the Court Clerk shall issue a summons to the respondents and the Child as in other civil cases. The summons shall be in substantially the following form:
(TL14-002, 4/18/97; Amended by PR15-030, 9/23/98)

Domestic Relations & Families

**IN THE COURT OF INDIAN OFFENSES
CHILDREN'S COURT
CHICKASAW NATION**

The Chickasaw Nation)	
In The Interest Of:)	
)	
_____)	Case No. _____
)	
An Alleged _____ Child,)	
And Concerning:)	
)	
_____)	
_____)	
Respondent(s))	

SUMMONS

The Court of Indian Offenses
Children's Court
for the Chickasaw Nation to:

, Respondents.

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the Court alleging that the above named _____ is a (delinquent) (neglected) Child (in-need-of-supervision) and that as the (parent) (guardian) (legal custodian) of said Child you have been named as the Respondent, all as more fully set out in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the courtroom of the Court of Indian Offenses for the Chickasaw Nation, 1500 North Country Club Road, Ada, Oklahoma, on the _____ day of _____, 20____, at the hour of _____ o'clock ____ p.m. and to there remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

YOU ARE FURTHER ORDERED, if the above named Child is in your physical Custody or subject to your control, to bring the Child to Court with you.

You may seek the advice of an attorney on any matter relating to this action at your own expense.

Court Clerk

[Seal]

(Return as in other civil cases)

SECTION 6-303.10

WHEN SUMMONS UNNECESSARY.

A summons need not issue or be served upon any respondent who appears voluntarily, or who waives service in writing before a notary public or Court Clerk, or who has promised to appear at the hearing in writing upon the release of a Child from emergency Custody or otherwise, but any such person shall be entitled to a copy of the petition and summons upon request. (TL14-002, 4/18/97)

SECTION 6-303.11

ADDITIONAL PARTIES TO BE SUMMONED.

The Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. (TL14-002, 4/18/97)

SECTION 6-303.12

SERVICE OF SUMMONS.

A. Summons shall best be served personally, but shall always be pursuant to the Code of the Chickasaw Nation.

B. If the parties, guardian, or other legal custodian of the Child required to be summoned cannot be found within the jurisdiction of the Chickasaw Nation, the fact of the Child's presence within the Chickasaw jurisdiction shall confer jurisdiction on the Court as to any absent Parent, guardian, or legal custodian if due notice has been given in the following manner:

1. When the residence of the person to be served outside the Chickasaw jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of the requested receipt.

2. When the person to be served has no residence within the Chickasaw jurisdiction and his place of residence is not known or when he cannot be found within the Chickasaw jurisdiction after due diligence, service may be accomplished by publication.
(TL14-002, 4/18/97)

SECTION 6-303.13

FAILURE TO APPEAR.

A. Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of court and a bench warrant may issue.

B. If after reasonable effort the summons cannot be served or if the welfare of the Child requires that he be brought immediately into the Custody of the Court, a bench warrant may be issued for the Parents, guardian, or other legal custodian or for the Child, or a search warrant may issue for the Child as provided by law.

C. When a Parent or other person who signed a written promise to appear and bring the Child to court, or who has waived or acknowledged service fails to appear with the Child on the date set by the Court, a bench warrant may be issued for the Parent or other person, the Child, or both.

(TL14-002, 4/18/97)

SECTION 6-303.14

APPOINTMENT OF GUARDIAN *AD LITEM*.

A. The Court may appoint a guardian *ad litem* to protect the interest of a Child in proceedings when:

1. no Parent, guardian, legal custodian, or relative of the Child appears at the first or any subsequent hearing in the case;
2. the Court finds that there may be a conflict of interest between the Child and his Parent, guardian, or other legal custodian; or
3. the Court finds that it is in the Child's interest and necessary for his welfare, whether or not a Parent, guardian, or other legal custodian is present.

B. The Court may appoint a guardian *ad litem* for any Parent in proceedings under this Chapter who has been determined to be mentally ill by a court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian *ad litem*. If the conservator does not serve as guardian *ad litem*, he shall be informed that a guardian *ad litem* has been appointed.

C. At the time any Child first appears in court, if it is determined that he has no guardian of his person, the Court shall appoint a guardian of the person of the Child before proceeding with the matter.

D. In all proceedings brought for the protection of a Child suffering from abuse or non-accidental injury, a guardian *ad litem* shall be appointed for said Child. Said guardian shall have the power to represent the Child in the legal proceedings.

E. The guardian *ad litem* shall, whenever practical, be required to personally visit the place of residence of the Child. (TL14-002, 4/18/97)

SECTION 6-303.15

ADJUDICATORY HEARING.

A. At the Adjudicatory Hearing, which shall be conducted as provided in the rules of civil procedure except that the rules of criminal procedure shall apply in delinquency cases, the Court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning Delinquent Children or Children in need of Supervision or by a preponderance of the evidence in cases concerning Neglected or Dependent Children; except that jurisdictional matters of the age and residence of the Child shall be deemed admitted by or on behalf of the Child unless specifically denied prior to the Adjudicatory Hearing.

B. When it appears that the evidence presented at the hearing discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

C. In such event, the Court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

D. If the amendment results in a substantial departure from the original allegations in the petition, the Court shall continue the hearing on the motion of any interested party, or the Court may grant a continuance on its motion if it finds it to be in the best interests of the Child or any other party to the proceeding.

(TL14-002, 4/18/97)

SECTION 6-303.16

RESERVED.

(PR16-025, 8/23/99)

SECTION 6-303.17

CONSENT DECREE.

At any time during the adjudicatory process, but prior to the entry of an order sustaining the petition as provided in Section 6-303.19 of this Title 6, a consent decree may be entered as provided in Section 6-303.5 of this Title 6. (TL14-002, 4/18/97)

SECTION 6-303.18

DISMISSAL OF PETITION.

When the Court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning Delinquent Children or Children in need of Supervision or by a preponderance of the evidence in cases concerning Neglected or Dependent Children, the Court shall order the petition dismissed and the Child discharged from any

Detention or restriction previously ordered. His Parents, guardian, or other legal custodian shall also be discharged from any restriction other than a previous temporary order. (TL14-002, 4/18/97)

SECTION 6-303.19 **SUSTAINING PETITION.**

When the Court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning Delinquent Children or Children in need of Supervision or by a preponderance of the evidence in cases concerning Neglected or Dependent Children, the Court shall sustain the petition and make an order of adjudication setting forth whether the Child is Delinquent, in need of Supervision, or Neglected or Dependent and making the Child a ward of the Court. In cases concerning Neglected or Dependent Children, evidence that Child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such Child is Neglected or Dependent and such evidence shall be sufficient to support an adjudication under this Section.

(TL14-002, 4/18/97)

SECTION 6-303.20 **TEMPORARY ORDERS.**

Upon sustaining a petition the Court shall make such dispositional orders as may be necessary to protect the Child prior to the Dispositional Hearing which shall be held without undue delay. (TL14-002, 4/18/97)

**ARTICLE D
DISPOSITION**

Section 6-304.1	Dispositional Hearing.
Section 6-304.2	Social Studies and Reports.
Section 6-304.3	Treatment Plan.
Section 6-304.4	Medical Examination.
Section 6-304.5	Hearing Purpose.
Section 6-304.6	Informal Hearing.
Section 6-304.7	Continuance.
Section 6-304.8	Order of Protection.
Section 6-304.9	Placement Preferences.
Section 6-304.10	Extended Family Defined.
Section 6-304.11	Neglected or Dependent Child; Disposition.
Section 6-304.12	Child in need of Supervision; Disposition.
Section 6-304.13	Delinquent Child; Disposition.
Section 6-304.14	Legal Custody; Guardianship.
Section 6-304.15	Probation for Delinquents and Children in Need of Supervision.
Section 6-304.16	New Hearing Authorized.
Section 6-304.17	Continuing Jurisdiction.
Section 6-304.18	Motion for Termination of Parental Rights.
Section 6-304.19	Appointment of Counsel.
Section 6-304.20	Termination Based on Abandonment.
Section 6-304.21	Jury Trial.
Section 6-304.22	Criteria for Termination.
Section 6-304.23	Termination.
Section 6-304.24	Review of Child's Disposition Following Termination of the Parent-Child Legal Relationship.
Section 6-304.25	Expert Testimony.
Section 6-304.26	Effect of Decree.
Section 6-304.27	Appeals.
Section 6-304.28	Traditional Custodian's and Grandparents' Rights.
Section 6-304.29	Orders for Support.

SECTION 6-304.1

DISPOSITIONAL HEARING.

After making an order of adjudication finding the Child to be a ward of the Court, the Court shall hear evidence on the question of the proper disposition best serving the interests of the Child and the Chickasaw Nation at a hearing scheduled for that purpose. (TL14-002, 4/18/97)

NOTE: Solicitor's Office recommended removing Chapter 14, Sections 5-1401 thru 5-1408.45, from Title 5 of the Criminal Code and placing it in a more appropriate Title. Those Sections were moved to Title 6, Chapter 3, Articles A thru G.

SECTION 6-304.2 **SOCIAL STUDIES AND REPORTS.**

A. The Court may order any agency within its jurisdiction and request any other agency to prepare and submit to the Court after the adjudication and prior to disposition, a social study, home study, family or medical history or other reports which may be helpful in determining proper treatment and disposition for the family.

B. After adjudication the Court may order or request, as appropriate, any agency to submit any pre-adjudicatory social studies or reports helpful in determining proper treatment and disposition for the family.

C. Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at least five days prior to the Dispositional Hearing.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-304.3 **TREATMENT PLAN.**

A. In every case the Court shall order the Department to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.

B. The treatment plan shall contain at a minimum:

1. a brief social and family history;
2. a brief statement of the causes for the Court to exercise its jurisdiction;
3. the specific treatment programs the family should be required to complete, their duration, and what is expected to be accomplished;
4. the specific actions the Parents, guardian, legal custodian or Child should be ordered to do or refrain from doing and the reasons therefor;
5. the specific treatment or other social services offered by the Chickasaw Nation which the family should be required to accept; and

6. the person or agency to be vested with Custody of the Child if the Child cannot remain in his own home, and a detailed plan describing how and when the Child will be returned to his home under supervision and when court supervision should cease.

C. The treatment plan shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the Dispositional Hearing.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-304.4 **MEDICAL EXAMINATION.**

The Court may have the Child examined by a physician, psychiatrist, or psychologist, and the Court may place the Child in a hospital or other suitable facility for this purpose.
(TL14-002, 4/18/97)

SECTION 6-304.5 **HEARING PURPOSE.**

The purpose of the Dispositional Hearing is for the Court to determine the treatment which should be ordered to attempt to correct the problems which led to the adjudication, and to provide for the health, welfare, and safety of the Child during the treatment period or, if treatment cannot or does not correct the problems after actual attempts have been made to do so, to provide for the long term health, welfare, and safety of the Child. (TL14-002, 4/18/97)

SECTION 6-304.6 **INFORMAL HEARING.**

The Dispositional Hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.
(TL14-002, 4/18/97)

SECTION 6-304.7 **CONTINUANCE.**

A. The Court may continue the Dispositional Hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the Court shall continue the hearing for good cause on the motion of any interested party in any case where the Termination of the Parent-child Legal relationship is a possible remedy.

B. If the hearing is continued, the Court shall make an appropriate order for Detention of the Child or for his release in the Custody of his Parents, guardian, or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.

C. In scheduling investigations and hearings, the Court shall give priority to proceedings concerning a Child who is in Detention or who has otherwise been removed from his home before an order of disposition has been made.
(TL14-002, 4/18/97)

SECTION 6-304.8

ORDER OF PROTECTION.

A. The Court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this Chapter. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the Parent, guardian, or any other person who is party to the proceeding.

B. The order of protection may require any such person:

1. to stay away from a Child or his residence;
2. to permit a Parent to visit a Child at stated periods;
3. to abstain from offensive conduct against a Child, his Parent or Parents, guardian, or any other person to whom legal Custody of a Child has been given;
4. to give proper attention to the care of the home;
5. to cooperate in good faith with an agency:
 - a. which has been given legal Custody of a Child;
 - b. which is providing Protective Supervision of a Child by court order; or
 - c. to which the Child has been referred by the Court;
6. to refrain from acts of commission or omission that tend to make a home an improper place for a Child; or
7. to perform any legal obligation of support.

C. When such an order of protection is made applicable to a Parent or guardian, it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such Parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in Subsection E of this Section.

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D. After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the Child and the Nation will be served thereby.

E. A person failing to comply with an order of protection without good cause may be found in contempt of court.
(TL14-002, 4/18/97)

SECTION 6-304.9

PLACEMENT PREFERENCES.

A. In making a placement of or Committing legal Custody of a Child to some person in the dispositional process whether for foster care or adoption, the Court shall place the Child in the following descending order of preference:

1. the natural Parents, adoptive Parents, or Stepparents as the case may be;
2. a citizen of the Chickasaw Nation over eighteen (18) years of age who is the Child's Grandparent, Aunt or Uncle, Brother or Sister, Brother-in-law or Sister-in-law, Niece or Nephew, first or second Cousin, and their spouse;
3. a member of another Indian tribe over eighteen (18) years of age who is the Child's Grandparent, Aunt or Uncle, Brother or Sister, Brother-in-law or Sister-in-law, Niece or Nephew, first or second Cousin, and their spouse;
4. any other person over eighteen (18) years of age who is the Child's Grandparent, Aunt or Uncle, Brother or Sister, Brother-in-law or Sister-in-law, Niece or Nephew, first or second Cousin, and their spouse;
5. a Traditional Custodian who is a citizen of the Chickasaw Nation and their spouse;
6. a Traditional Custodian who is a member of another Indian tribe and their spouse;
7. an Indian Foster Home licensed by any other licensing authority within the state or an Indian Foster Home licensed by some other tribe;
8. a Foster Home licensed by the Department;
9. an institution for Children licensed or approved by the Department with a program suitable to meet the Child's needs.

10. any other citizen of the Chickasaw Nation and their spouse; or

11. any other Indian person and their spouse.

B. Where appropriate the Court may consider the preference of the Parents and the proximity of the prospective Foster Home to the Child's home in applying these preferences.

C. For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.

D. The Court may place the Child with the Department or a Child Placement Agency approved by the Department or the Chickasaw Nation Legislature for further placement in lieu of a direct placement pursuant to Subsection A of this Section. When the Court does so, the agency shall place said Child in accordance with the preferences described above and any person having a prior preference may petition the Court to review the placement to a lower preference made by that agency.

E. State courts shall follow the placement preference rules outlined herein.
(TL14-002, 4/18/97; PR15-030, 9/23/98; PR25-009, 7/18/08)

SECTION 6-304.10 **EXTENDED FAMILY DEFINED.**

For purposes of state court proceedings pursuant to the Indian Child Welfare Act, 25 U.S.C. §1901 et. seq., a Child's extended family is defined to mean the Child's Grandparent, Aunt or Uncle, Brother or Sister, Brother-in-law or Sister-in-law, Niece or Nephew, first or second Cousin, or Stepparent over eighteen years of age and their spouse as those terms of relation are defined in this Chapter. (TL14-002, 4/18/97)

SECTION 6-304.11 **NEGLECTED OR DEPENDENT CHILD; DISPOSITION.**

A. When a Child has been adjudicated to be Neglected or Dependent, the Court shall enter a decree of disposition. When the decree does not terminate the Parent-Child legal relationship, it shall include one or more of the following provisions which the Court finds appropriate:

1. The Court may place the Child in the legal Custody of one or both Parents or the guardian, with or without Protective Supervision, under such conditions as the Court may impose.

2. The Court may place the Child in the legal Custody of a relative or other suitable person, with or without Protective Supervision, under such conditions as the Court may impose, in accordance with Section 6-304.9 of this Title 6.

3. The Court may place legal Custody in the Department or a Child Placement Agency for placement in a Family Care Home, or other Child care facility in accordance with Section 6-304.9 of this Title 6.

4. The Court may order that the Child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care and may place the Child in a hospital or other suitable facility for such purposes.

B. The Court may enter a decree terminating the Parent-Child legal relationship of one or both Parents when all reasonable efforts to treat the family have failed.

C. Upon the entry of a decree terminating the Parent-Child legal relationship of both Parents, or the sole surviving Parent, or of the mother of a Child born out of wedlock, the Court may:

1. vest the Department or a Child Placement Agency with the legal Custody and Guardianship of the Person of a Child for the purposes of placing the Child for adoption according to the placement preferences; or

2. make any other disposition provided in Subsection A of this Section that the Court finds appropriate.

D. Upon the entry of a decree terminating the Parent-Child legal relationship of one Parent, the Court may:

1. leave the Child in the legal Custody of the other Parent and discharge the proceedings; or

2. make any other disposition provided in Subsection A of this Section that the Court finds appropriate.

E. When a Child has been adjudicated neglected because he has been abandoned by his Parent or Parents, the Court may enter a decree terminating the Parent-Child relationship if it finds:

1. that the Parent or Parents having legal Custody have left the Child without communication and willfully failed to support the Child for a period of one year or more with no indication of the Parents' willingness to assume a parental role.

2. that the identity of the Parent or Parents of the Child is unknown and has been unknown for a period of ninety days and that reasonable efforts to identify and locate the Parents have failed.

F. In placing the legal Custody or Guardianship of the Person of a Child with an individual or a private agency, the Court shall give primary consideration to the welfare of the Child, but shall take into consideration the religious preferences of the Child or of his Parents whenever practicable.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-304.12

CHILD IN NEED OF SUPERVISION; DISPOSITION.

When a Child has been adjudicated as being in need of Supervision, the Court shall enter a decree of disposition containing one or more of the following provisions which the Court finds appropriate:

1. the Court may place the Child on probation or under Protective Supervision in the legal Custody of one or both Parents or the guardian under such conditions as the Court may impose;

2. the Court may place the Child in the legal Custody of a relative or other suitable person under such conditions as the Court may impose, which may include placing the Child on probation or under Protective Supervision in accordance with Section 6-304.9 of this Title 6;

3. the Court may require as a condition of probation that the Child report for assignment to a supervised work program or place such Child in a Child care facility which shall provide a supervised work program, if:

a. the Child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

b. the supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the Child, and is combined with counseling from guidance personnel; and

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c. the supervised work program assignment is made for a period of time consistent with the Child's best interest, but not exceeding one hundred eighty (180) days.

4. the Court may place legal Custody in the Department or a Child placement agency for placement in a Family Care Home or Child care facility, or it may place the Child in a Child Care Center;

5. the Court may Commit the Child to any institution or Group Care Facility designated by the Court.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-304.13

DELINQUENT CHILD; DISPOSITION.

A. If a Child has been adjudicated as being Delinquent, the Court shall transmit, with the Commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the care and treatment of the Child.

B. The designated institution shall provide the Court with any information concerning a Child Committed to its care which the Court at any time may require.

C. A Commitment of a Child to a designated institution under Section 6-304.12 or Section 6-304.13 shall be for an indeterminate period not to exceed two (2) years.

D. The Department may petition the Committing court to extend the Commitment for an additional period not to exceed two years. The petition shall set forth the reasons why it would be in the best interest of the Child or the public to extend the Commitment. Upon filing the petition, the Court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.

E. Each Commitment to a designated institution shall be reviewed no later than six months after it is entered and each six months thereafter.

(TL14-002, 4/18/97)

SECTION 6-304.14

LEGAL CUSTODY - GUARDIANSHIP.

A. Any individual, agency, or institution vested by the Court with legal Custody of a Child shall have the rights and duties defined in Sections 6-301.2.22.d and .f.

B. Any individual, agency, or institution vested by the Court with Guardianship of

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the Person of a Child shall have the rights and duties defined in Section 6-301.2.22; except that no guardian of the person may consent to the adoption of a Child unless that authority is expressly given him by the Court.

C. If legal Custody or Guardianship of the Person is vested in an agency or institution, the Court shall transmit with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the Child.

D. An individual, agency, or institution having legal Custody or Guardianship of the Person of a Child shall give the court any information concerning the Child which the Court at any time may require.

E. Any agency other than the Department or institution vested by the Court with legal Custody of a Child shall have the right, subject to the approval of the Court, to determine where and with whom the Child shall live.

F. No individual vested by the Court with legal Custody of Child shall remove the Child from the state for more than thirty (30) days without court approval.

G. A decree vesting legal Custody of a Child in an individual, institution, or agency other than the Department shall be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall be reviewed by the Court no later than six (6) months after it is entered.

H. The individual, institution, or agency vested with the legal Custody of a Child may petition the Court for renewal of the decree. The Court, after notice and hearing, may renew the decree for such additional period as the Court may determine, if it finds such renewal to be in the best interest of the Child. The findings of the Court and the reasons therefor shall be entered with the order renewing or denying renewal of the decree.

I. No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the Court if he so requests.
(TL14-002, 4/18/97; PR15-030, 9/23/98; PR16-003, 10/16/98)

SECTION 6-304.15

PROBATION FOR DELINQUENTS AND CHILDREN IN NEED OF SUPERVISION.

A. The terms and conditions of probation shall be specified by rules or orders of the Court. The Court, as a condition of probation for a Child who is fourteen (14) years of age or older but less than eighteen (18) years of age on the date of the Dispositional Hearing, has the power to impose a Commitment, placement, or Detention, whether continuous or at designated

intervals, but it shall not exceed forty five (45) days. Each Child placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained to him.

B. The Court shall review the terms and conditions of probation and the progress of each Child placed on probation at least once every six (6) months.

C. The Court may release a Child from probation or modify the terms and conditions of his probation at any time, but any Child who has complied satisfactorily with the terms and conditions of his probation for a period of two (2) years shall be released from probation, and the jurisdiction of the Court shall be terminated.

1. When it is alleged that a Child has violated the terms and conditions of his probation, the Court shall set a hearing on the alleged violation and shall give notice to the Child and his Parents, guardian or other legal custodian, and any other parties to the proceeding.

2. The Child, his Parents, guardian, or other legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing, at his or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses.

3. The hearing on the alleged violation shall be conducted as soon as possible.

D. If the Court finds that the Child violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this Chapter which is in the best interest of the Child and the Chickasaw Nation.

E. If the Court finds that the Child did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the Child on probation under the terms and conditions previously described.

F. If the Court revokes the probation of a person over eighteen years of age, in addition to other action permitted by this Chapter, the Court may sentence him to an authorized facility for incarceration for a period not to exceed one hundred eighty (180) days during which he may be released during the day for school attendance, job training, or employment, as ordered by the Court.

(TL14-002, 4/18/97;)

SECTION 6-304.16

NEW HEARING AUTHORIZED.

A. A Parent, guardian, custodian, or next of kin of any Child adjudicated under this Chapter, or any person affected by a decree in a proceeding under this Chapter, may petition the Court for a new hearing on the following grounds:

1. that new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered; or
2. that irregularities in the proceedings prevented a fair hearing.

B. If it appears to the Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the Child.

(TL14-002, 4/18/97)

SECTION 6-304.17

CONTINUING JURISDICTION.

Except as otherwise provided in this Chapter, the jurisdiction of the Court over any Child adjudicated as Neglected or Dependent, in need of Supervision, or Delinquent shall continue until he becomes eighteen (18) years of age unless terminated by court order. (TL14-002, 4/18/97)

SECTION 6-304.18

MOTION FOR TERMINATION OF PARENTAL RIGHTS.

Termination of a Parent-Child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a Parent-Child legal relationship shall be considered at a separate hearing following an adjudication of a Child as Dependent or Neglected. Such motion shall be filed at least thirty (30) days before such hearing. (TL14-002, 4/18/97)

SECTION 6-304.19

APPOINTMENT OF COUNSEL.

A. After a motion for termination of a Parent-Child legal relationship is filed pursuant to this Chapter, the Parent or Parents shall be advised of the right to counsel, at their own expense, or, if the Parents cannot afford an attorney, free legal counsel shall be appointed. Appointed legal counsel shall be paid no more than five hundred dollars (\$500) per case.

B. An attorney, who shall be the Child's previously appointed guardian *ad litem* whenever possible, shall be appointed to represent the Child's best interest in any hearing determining the involuntary Termination of the Parent-child Legal relationship. Additionally,

said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement of the Child is effected or until the Court's jurisdiction is terminated. If a respondent Parent is a Child, a guardian *ad litem* shall be appointed and shall serve in addition to any counsel requested by the Parent. (TL14-002, 4/18/97; PR15-030, 9/23/98; PR16-025, 8/23/99)

SECTION 6-304.20

TERMINATION BASED ON ABANDONMENT.

Before a Termination of the Parent-child Legal relationship based on abandonment can be ordered, the petitioner shall file an affidavit stating what efforts have been made to locate the Parent or Parents of the Child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing. (TL14-002, 4/18/97)

SECTION 6-304.21

JURY TRIAL.

All hearings or trials shall be to the Court, except when a jury is demanded in accordance with such provisions of Chickasaw law as are applicable to juvenile proceedings. (TL14-002, 4/18/97)

SECTION 6-304.22

CRITERIA FOR TERMINATION.

A. The Court, in paramount consideration of the health, safety or welfare and best interest of the Child, may order a Termination of the Parent-child Legal Relationship upon the finding of any one of the following situations:

1. a finding that the Child has been abandoned by his Parent or Parents; for purposes of this Section, the term "Abandon" or "Abandonment" includes, but is not limited to, the following:
 - a. the Parent has left the child alone or in the care of another who is not the Parent of the Child without identifying the Child or furnishing a means of identification for the Child, the whereabouts of the Parents are unknown, and the Child's identity cannot be ascertained by the exercise of reasonable diligence;
 - b. the Parent has voluntarily left the Child alone or in the care of another who is not the Parent of the Child and expressed a willful intent by words, actions, or omissions not to return for the Child; or
 - c. the Parent fails to establish and/or maintain a substantial and positive relationship with the Child for a period of six (6) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for

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Termination of Parental Rights. For purposes of this paragraph, "Establish and/or Maintain a Substantial and Positive Relationship" includes, but is not limited to:

- i. frequent and regular contact with the minor through frequent and regular visitation and/or frequent and regular communication to or with the Child; and
- ii. the exercise of parental rights and responsibilities.

Incidental or token visits or communications shall not be sufficient to establish and/or maintain a substantial and positive relationship with the Child; or

2. a finding that the Child is adjudicated Dependent or Neglected and all of the following exist:

- a. that an appropriate treatment plan approved by the Court has not been reasonably complied with by the Parent or Parents or has not been successful;
- b. that the Parent is unfit; and
- c. that the conduct or condition of the Parent or Parents is unlikely to change within a reasonable time;

3. a finding that the Parent of a Child:

- a. has voluntarily placed physical custody of the Child with the Chickasaw Indian Child Welfare Department, Oklahoma Department of Human Services or with a child-placing agency for out-of-home placement;
- b. has not complied with the placement agreement; and
- c. has not demonstrated during such period a firm intention to resume physical custody of the Child or to make permanent legal arrangements for the care of the Child;

4. a finding that:

- a. the Child has been adjudicated to be deprived; and

b. such condition is caused by or contributed to by acts or omissions of the Parent; and

c. Termination of Parental Rights is in the best interests of the Child, and

d. the Parent has failed to show that the condition which led to the adjudication of a Child deprived has been corrected although the Parent has been given not less than three (3) month's time to correct the condition;

5. a finding that a subsequent Child has been born to a Parent whose parental rights to any other Child has been terminated by the Court; provided, that the applicant shall show that the condition which led to the making of the finding which resulted in the termination of such parent's parental rights to the other Child has not been corrected. As used in this paragraph, the term "applicant" shall include, but not be limited to, a district attorney or the Child's attorney;

6. a finding that a Parent who does not have custody of the Child has for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for Termination of Parental Rights, willfully failed, refused or neglected to contribute to the support of such Child:

a. in substantial compliance with an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support; or

b. according to such parent's financial ability to contribute to such Child's support if no provision for support is provided in an order.

Incidental or token support shall not be construed or considered in establishing whether a Parent has maintained or contributed to the support of the Child;

7. a conviction in a criminal action for child abuse or enabling child abuse, neglecting a child or enabling the neglect of a child, child sexual abuse or enabling child sexual abuse, knowingly permitting or consenting to the use of a child in child pornography, rape, or lewd or indecent proposals or acts upon a child under the age of consent in any court of record;

8. a conviction in a criminal action that the Parent:

a. caused the death of a Child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such Child;

b. caused the death of a sibling of the Child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such sibling;

c. committed the murder of any Child or aided or abetted, attempted, conspired or solicited to commit murder of any Child;

d. committed voluntary manslaughter of another Child of the Parent, or aided or abetted, attempted, conspired or solicited to commit voluntary manslaughter of another Child of the Parent; or

e. committed a felony assault that has resulted in serious bodily injury to the Child or another Child of the Parent;

9. a finding in a deprived Child action either that:

a. the Parent has physically or sexually abused the Child or a sibling of such Child or failed to protect the Child or a sibling of such Child from physical or sexual abuse that is heinous or shocking to the Court;

b. the Child or sibling of such Child has suffered severe harm or injury as a result of such physical or sexual abuse;

c. the Parent has physically or sexually abused the Child or a sibling of such Child or failed to protect the Child or a sibling of such Child from physical or sexual abuse subsequent to a previous finding that such Parent has physically or sexually abused the Child or a sibling of such Child or failed to protect the Child or a sibling of such Child from physical or sexual abuse;

d. the Child has been adjudicated a deprived Child as a result of a single incident of severe sexual abuse, severe neglect or the infliction of serious bodily injury or torture to the Child, a sibling of the Child, or a Child within the household where the Child resides, by the Parent of the Child; or

e. the Parent has inflicted chronic abuse, chronic neglect or torture on the Child, a sibling of the Child or another Child within the household where the Child resides;

10. The Child was conceived as a result of rape or an act committed outside of the Chickasaw Nation which if committed in the Chickasaw Nation would constitute rape. This Paragraph 10 shall only apply to the Parent who committed the rape or act and whose Child has been placed out of the home;

11. a finding that all of the following exist:
- a. the Child has been adjudicated deprived; and
 - b. custody of the Child has been placed outside the home of a natural or adoptive Parent, guardian or extended family member; and
 - c. the Parent whose rights are sought to be terminated has been incarcerated; and
 - d. the continuation of parental rights would result in harm to the Child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the Parent/Child relationship; any previous incarcerations; any history of criminal behavior, including crimes against Children; the age of the Child; the evidence of abuse or neglect of the Child or siblings of the Child by the Parent; and the current relationship between the Parent and the Child and the manner in which the Parent has exercised parental rights and duties in the past; and
 - e. Termination of Parental Rights is in the best interests of the Child.

Provided, that the incarceration of a Parent shall not in and of itself be sufficient to deprive a Parent of parental rights;

12. a finding that all of the following exist:
- a. the Child has been adjudicated deprived; and
 - b. custody of the Child has been placed outside the home of a natural or adoptive Parent, guardian or extended family member; and
 - c. the Parent whose rights are sought to be terminated has a mental illness or mental deficiency which renders the Parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities; and
 - d. the continuation of parental rights would result in harm or threatened harm to the Child; and
 - e. the mental illness or mental deficiency of the Parent is such that it will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve; and

- f. Termination of Parental Rights is in the best interests of the Child.

Provided, a finding that a Parent has a mental illness or mental deficiency shall not in and of itself deprive the Parent of his or her parental rights;

13. the Parent of the Child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted treatment for this problem during a three (3) year period immediately prior to the filing of the petition which brought that Child to the Court's attention;

14. a Child has been placed in foster care by the Chickasaw Indian Child Welfare Department or the Oklahoma Department of Human Services for fifteen (15) of the most recent twenty two (22) months preceding the filing of the petition. For purposes of this Paragraph, a Child shall be considered to have entered foster care on the earlier of:

- a. the adjudication date; or

- b. the date that is sixty (60) days after the date on which the Child is removed from the home.

B. An order directing the Termination of Parental Rights is a final appealable order.

C. The provisions of this Section shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the Child. Such proceedings and actions shall be governed by the Chickasaw Adoption Code.

D. Petitions.

1. A petition for Termination of Parental Rights may be filed by the Prosecutor or the attorney of a Child alleged to be or adjudicated deprived.

2. A petition for Termination of Parental Rights shall be filed by the Prosecutor for those petitions required to be filed.

3. If a Child's attorney files a petition for the termination of the parental rights of the Parents of the Child, the Prosecutor shall join in the petition or motion for those petitions or motions required to be filed by the Prosecutor.

E. In determining unfitness, conduct, or condition, the Court shall find that continuation of the legal relationship between Parent and Child is likely to result in grave risk of death or serious injury to the Child or that the conduct or condition of the Parent or Parents

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renders the Parent or Parents unable or unwilling to give the Child reasonable parental care. In making such determinations, the Court shall consider, but not be limited to, the following:

1. emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the Child;
2. conduct towards the Child of a physically or sexually abusive nature;
3. history of violent behavior;
4. a single incident of life-threatening or gravely disabling injury or disfigurement of the Child;
5. excessive use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the Child;
6. neglect of the Child;
7. long-term confinement of the parent;
8. injury or death of a sibling due to proven parental abuse or neglect; or
9. reasonable efforts by Child care agencies which have been unable to rehabilitate the parent or parents.

F. In considering any of the factors in Subsection E of this Section in terminating the Parent-Child Legal Relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the Child. The Court shall review and order, if necessary, an evaluation of the Child's physical, mental, and emotional conditions.
(PR22-017, 7/15/05)

SECTION 6-304.23 **TERMINATION.**

The Court shall order termination of parental rights if it finds by clear and convincing evidence that termination of parental rights and a permanent placement with another person is in the best interest of the Child. (TL14-002, 4/18/97)

SECTION 6-304.24 **REVIEW OF CHILD'S DISPOSITION FOLLOWING TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP.**

A. The Court, at the conclusion of a hearing in which it ordered the termination of a Parent-Child legal relationship, shall order that a review hearing be held not later than ninety (90) days following the date of the termination. At such hearing, the agency or individual vested with Custody of the Child shall report to the Court what disposition of the Child, if any, has occurred, and the guardian *ad litem* shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the Child.

B. If no adoption has taken place within a reasonable time and the Court determines that adoption is not immediately feasible or appropriate, the Court may order that provision be made immediately for long-term foster placement of the Child.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-304.25 **EXPERT TESTIMONY.**

A. Subject to the availability of funds, an indigent Parent has the right to have appointed one expert witness of his own choosing whose reasonable fees and expenses, subject to the Court's prior review and approval, shall be paid from court funds.

B. All ordered evaluations shall be made available to counsel at least fifteen (15) days prior to the hearing.
(TL14-002, 4/18/97)

SECTION 6-304.26 **EFFECT OF DECREE.**

A. An order for the Termination of the Parent-child Legal relationship divests the Child and the Parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right of the Child to inherit from the Parent.

B. No order or decree entered pursuant to this Chapter shall disentitle a Child to any benefit due him from any third person, including but not limited to, any Indian tribe, any agency, any state, or the United States.

C. After the termination of a Parent-Child legal relationship, the former Parent is not entitled to any notice of proceedings for the adoption of the Child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.
(TL14-002, 4/18/97)

SECTION 6-304.27 **APPEALS.**

A. Appeals of court decrees made under an order terminating parental rights shall be given precedence on the calendar of the appellate court over all other matters unless otherwise provided by law.

B. Whenever an appeal is made concerning Termination of parental rights, an indigent Parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceeding for the appeal to be paid from court funds.
(TL14-002, 4/18/97)

SECTION 6-304.28

TRADITIONAL CUSTODIAN'S AND GRANDPARENTS' RIGHTS.

A. No dispositional order or decree including Termination of parental rights and adoption shall divest the Child's Traditional Custodians or Grandparents of their right to reasonable visitation with the Child and their duty to provide instruction and training to the Child regarding Chickasaw Nation customs and traditions or their duty to provide the necessities of life for the Child should the Parents be unable to do so, unless those rights and duties have been extinguished in a proceeding in which the individual was a party, provided that adoptive Traditional Custodians shall also succeed to these rights and duties.

B. The rights and duties of the Traditional Custodians and Grandparents may be enforced by court order whenever it appears in the Child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard.
(TL14-002, 4/18/97)

SECTION 6-304.29

ORDERS FOR SUPPORT.

A. Whenever a Child is removed from the Custody of his Parent, guardian, or other custodian, the Parent or other person shall be ordered by the Court to contribute a reasonable amount within their means, or to do labor for the Chickasaw Nation, or take other reasonable action to provide support for the Child.

B. In cases of necessity, the Court may order a Traditional Custodian to assist in providing the necessities of life within that custodian's means after a hearing, whether the Child has been placed in his own home or elsewhere.

C. When the Chickasaw Nation, or some other agency is paying for foster care for such Child, the contribution of the Parent shall be paid to the Court Clerk and dispensed by court order to that agency or the Chickasaw Nation as may be necessary by law or appropriate in the circumstances. In all cases of placement with a particular family the Court Clerk is, subject to the supervision of the Court, to prevent waste or misuse of such funds.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

**ARTICLE E
CHILD ABUSE**

Section 6-305.1	Protection of the Nation.
Section 6-305.2	Definitions.
Section 6-305.3	Persons Required to Report Child Abuse or Neglect.
Section 6-305.4	Required Report of Postmortem Investigation.
Section 6-305.5	Evidence of Abuse.
Section 6-305.6	Temporary Protective Custody.
Section 6-305.7	Reporting Procedures.
Section 6-305.8	Action upon Receipt of Report.
Section 6-305.9	Child Protection Teams.
Section 6-305.10	Immunity from Liability.
Section 6-305.11	Child Abuse and Child Neglect Diversion Program.
Section 6-305.12	Evidence not Privileged.
Section 6-305.13	Court Proceedings; Guardian <i>Ad Litem</i> .
Section 6-305.14	Central Registry.
Section 6-305.15	Confidentiality of Records.

SECTION 6-305.1 **PROTECTION OF THE NATION.**

The Chickasaw Nation Tribal Legislature hereby declares that the complete reporting of Child abuse is a matter of concern to the Chickasaw Nation and in enacting these provisions it is the intent of the Chickasaw Nation to protect Chickasaw Children within or without the jurisdiction of the Chickasaw Nation and to offer protective services in order to prevent any further harm to a Child suffering from abuse. It is the further intent of the Chickasaw Nation that the various federal, state and Chickasaw Nation medical, mental health, education and social services agencies impacting on Child welfare matters find a common purpose through cooperative participation in Child Protection Teams. (TL14-002, 4/18/97)

NOTE: Solicitor's Office recommended removing Chapter 14, Sections 5-1401 thru 5-1408.45, from Title 5 of the Criminal Code and placing it in a more appropriate Title. Those Sections were moved to Title 6, Chapter 3, Articles A thru G.

SECTION 6-305.2 **DEFINITIONS.**

As used in this Chapter, unless the context otherwise requires:

1. "Abuse" or "Child Abuse or Neglect" means an act or omission in one (1) of the following categories which seriously threatens the health or welfare of a Child:
 - a. any case in which a Child exhibits evidence of skin bruising,

bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death, and such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence;

b. any case in which a Child is subject to sexual assault or molestation; or

c. any case in which the Child's Parents, legal guardians, or custodians fail to take the same actions to provide adequate food, clothing, shelter, or supervision that a prudent Parent would take.

In all cases, those investigating reports of Child Abuse shall take into account accepted Child rearing practices of the culture in which the Child participates. Nothing in this Subsection shall refer to acts which could be construed to be reasonable exercises of parental discipline.

2. "Child Protection Team" means a multi-disciplinary team as established and administered by the Chickasaw Nation Department.

3. "Chickasaw Nation Department" means the Chickasaw Nation, the Chickasaw Nation Department of Social Services or the Chickasaw Nation Indian Child Welfare Program.

4. "Law Enforcement Agency" means the BIA Law Enforcement Division, a police department in incorporated municipalities or the office of the county sheriff, or law enforcement officers of the State.

5. "Neglect" means acts which can reasonably be construed to fall under the definition of "Child Abuse or Neglect" as defined in Subsection A of this Section.

6. "Receiving Agency" means the department or Law Enforcement Agency first receiving a report of alleged Child Abuse.

7. "Responsible Person" means a Child's Parent, legal guardian, or custodian or any other person responsible for the Child's health and welfare.

8. "Unfounded Report" means any report made pursuant to this Chapter which is not supported by some credible evidence.
(TL14-002, 4/18/97)

SECTION 6-305.3

**PERSONS REQUIRED TO REPORT CHILD ABUSE OR
NEGLECT.**

A. Any person specified in Subsection B of this Section who has reasonable cause to know or suspect that a Child has been subjected to Abuse or Neglect or who has observed the Child being subjected to circumstances or conditions which would reasonably result in Abuse or Neglect shall immediately report or cause a report to be made of such fact to the Chickasaw Indian Child Welfare Program or any Law Enforcement Agency.

B. Persons required to report such Abuse or Neglect or circumstances or conditions shall include any:

1. physician or surgeon, including a physician in training;
2. child health associate or community health representative (CHR);
3. medical examiner or coroner;
4. dentist;
5. osteopath;
6. optometrist;
7. chiropractor;
8. chiropodist or podiatrist;
9. registered nurse or licensed practical nurse;
10. hospital personnel engaged in the admission, care, or treatment of patients;
11. school official or employee;
12. social worker or worker in a Family Care Home or Child Care Center;
13. mental health professional;
14. any law enforcement personnel;

15. all officers of the Court.

C. In addition to those persons specifically required by this Section to report known or suspected Child Abuse or Neglect and circumstances or conditions which might reasonably result in Abuse or Neglect, any other person may report known or suspected Child Abuse or Neglect and circumstances or conditions which might reasonably result in Child Abuse or Neglect to any Law Enforcement Agency and the Chickasaw Indian Child Welfare Program.

D. Any person who willfully violates the provisions of this Section:

1. shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000); and

2. shall be liable for damages approximately caused thereby.
(TL14-002, 4/18/97)

SECTION 6-305.4

**REQUIRED REPORT OF POSTMORTEM
INVESTIGATION.**

A. Any person who is required to report known or suspected Child Abuse or Neglect who has reasonable cause to suspect that a Child died as a result of Child Abuse or Neglect shall report such fact immediately to the appropriate Law Enforcement Agency and to the appropriate coroner or medical examiner. The Law Enforcement Agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the BIA Law Enforcement Agency, the prosecutor, and the Chickasaw Nation Department.

B. The Chickasaw Nation Department shall forward a copy of such report to the central registry, as defined in Section 6-305.14 below.
(TL14-002, 4/18/97)

SECTION 6-305.5

EVIDENCE OF ABUSE.

A. Any Child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him a Child he reasonably believes has been Abused or Neglected may take or cause to be taken color photographs of the areas of trauma visible on the Child. If medically indicated, such person may take or cause to be taken X-rays of the Child.

B. Any color photographs or X-rays which show evidence of Child Abuse shall be immediately forwarded to a Receiving Agency. (TL14-002, 4/18/97)

SECTION 6-305.6

TEMPORARY PROTECTIVE CUSTODY.

The Judge of the Court shall be responsible for making available a person appointed by him, who may be another Judge, a referee, or any other officer of the Court, to be available by telephone at all times to act with the authorization and authority of the Court when no Judge is present in the Court, to issue written or verbal temporary protective Custody orders, or in the alternative or in addition thereto, the Judge may enter his general order detailing the procedure to be used in taking Children into Custody on an emergency basis when no Judge is present at the Court. These orders may be requested by the Chickasaw Nation Department, a BIA law enforcement officer, an administrator of a hospital in which a Child he reasonably believes to have been Abused or Neglected is being treated, or any physician who has before him a Child he reasonably believes has been Abused or Neglected, whether or not additional medical treatment is required, if the belief that circumstances or the condition of the Child is such that continuing in his place of residence or in the care and Custody of the person responsible for his care and Custody would present an imminent danger to that Child's life or health. The Chickasaw Nation Department shall be notified on such action immediately by the Court appointed official in order that Child protective proceedings may be initiated. In any case, such temporary Custody under this Section shall not exceed seventy-two (72) hours, except for good cause shown. (TL14-002, 4/18/97)

SECTION 6-305.7

REPORTING PROCEDURES.

A. Reports of known or suspected Child Abuse or Neglect made pursuant to this Chapter shall be made immediately to the Chickasaw Nation Department or BIA Law Enforcement Agency and shall be followed promptly by a written report prepared by those persons required to report. The Receiving Agency shall forward a copy of its own report to the central registry on forms supplied by the Chickasaw Nation Department.

B. Such reports, when possible, shall include the following information:

1. the name, address, age, sex and race of the Child;
2. the name and address of the Responsible Person;
3. the nature and extent of the Child's injuries, including any evidence of previous known or suspected Abuse or Neglect to the Child or the Child's siblings;
4. the names and addresses of the persons responsible for the suspected Abuse or Neglect, if know;

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5. the family composition;
6. the source of the report and the name, address, and occupation of the person making the report;
7. any action taken by the reporting source; and
8. any other information that the person making the report believes may be helpful in furthering the purposes of this Section.

C. A copy of the report of known or suspected Child Abuse or Neglect shall be transmitted immediately by the Receiving Agency to the prosecutor's office and to the BIA Law Enforcement Agency.

D. A written report from persons or officials required by this Chapter to report known or suspected Child Abuse or Neglect shall be admissible as evidence in any proceeding related to Child Abuse.
(TL14-002, 4/18/97)

SECTION 6-305.8

ACTION UPON RECEIPT OF REPORT.

A. The Receiving Agency shall make a thorough investigation immediately upon receipt of any report of known or suspected Child Abuse or Neglect. The immediate concern of such investigation shall be the protection of the Child.

B. The investigation, to the extent that it is reasonably possible, shall include:

1. the nature, extent, and cause of the Abuse or Neglect;
2. the identity of the person responsible for such Abuse or Neglect;
3. the names and conditions of any other Children living in the same place;
and
4. the environment and the relationship of any Children therein to the person responsible for the suspected Abuse or Neglect.

C. The investigation shall, at a minimum, include a visit to the Child's place of residence or place of Custody and to the location of the alleged Abuse or Neglect and an interview with or observance of the Child reportedly having been Abused or Neglected. If

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admission to the Child's place of residence cannot be obtained, the Court, upon good cause shown, shall order the Responsible Person to allow the interview, examination and investigation.

D. The Chickasaw Nation Department shall be the Receiving Agency responsible for the coordination of all investigations of all reports of known or suspected Child Abuse or Neglect. The Chickasaw Nation Department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The Chickasaw Nation Department may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The Chickasaw Nation Department shall provide for persons to be continuously available to respond to such reports. Tribes and state and federal agencies may cooperate to fulfill the requirements of this Subsection. As used in this Subsection, "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the Chickasaw Nation Department or to have such arrangements made through agreements with local law enforcement agencies.

E. Upon receipt of a report, if the Chickasaw Nation Department reasonably believes Abuse or Neglect has occurred, it shall immediately offer social services to the Child who is the subject of the report and his family. If, before the investigation is completed, the opinion of the investigators is that assistance of the BIA Law Enforcement Agency is necessary for the protection of the Child or other Children under the same care, the BIA Law Enforcement Agency and the prosecutor shall be notified. If immediate removal is necessary to protect the Child or other Children under the same care from further Abuse, the Child or Children may be placed in protective Custody in accordance with Chickasaw Nation law.

F. If a local or state Law Enforcement Agency receives a report of known or suspected Child Abuse or Neglect, it shall first attempt to contact the Chickasaw Nation Department in order to refer the case for investigation. If the local or state Law Enforcement Agency is unable to contact the Chickasaw Nation Department, it shall make a complete investigation and may request the prosecutor to institute appropriate legal proceedings on behalf of the subject Child or other Children under the same care. The BIA Law Enforcement Agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the Chickasaw Nation Department.

(TL14-002, 4/18/97)

SECTION 6-305.9

CHILD PROTECTION TEAMS.

It is the intent of this Act to encourage the Chickasaw Nation Department to create and maintain one or more Child Protection Teams. The Court and the Chickasaw Nation Department

shall extend to each other its full cooperation in investigating all reports of Child Abuse and completing all follow-up reports, as required, in a timely manner. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-305.10 **IMMUNITY FROM LIABILITY.**

Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Chapter, the taking of color photographs or X-rays, or the placing in temporary Custody of a Child pursuant to this Chapter or otherwise performing his duties or acting pursuant to this Chapter shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting Child Abuse, any person taking color photographs or X-rays, and any person who has legal authority to place a Child in protective Custody shall be presumed. (TL14-002, 4/18/97)

SECTION 6-305.11 **CHILD ABUSE AND CHILD NEGLECT DIVERSION PROGRAM.**

A. The prosecutor, upon recommendation of the Chickasaw Nation Department, may withhold filing a case against any person accused or suspected of Child Abuse or Neglect and refer that person to a nonjudicial source for treatment or assistance, upon conditions set forth by the Chickasaw Nation Department and the prosecutor. If a person is so diverted from the criminal justice system, the prosecutor shall not file charges in connection with the case if the person participates to the satisfaction of the Chickasaw Nation Department and the prosecutor in the diversion program offered.

B. The initial diversion shall be for a period not to exceed two (2) years. This diversion period may be extended for one (1) additional one (1) year period by the prosecutor if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the prosecutor and the Chickasaw Nation Department.

C. If the person diverted successfully completes the diversion program to the satisfaction of the Chickasaw Nation Department and the prosecutor, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him.

D. Participating by a person accused or suspected of Child Abuse in any diversion program shall be voluntary.
(TL14-002, 4/18/97)

SECTION 6-305.12

EVIDENCE NOT PRIVILEGED.

The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceedings resulting from a report pursuant to this Chapter. (TL14-002, 4/18/97)

SECTION 6-305.13

COURT PROCEEDINGS; GUARDIAN *AD LITEM*.

A. In any proceeding initiated pursuant to this Chapter, the Court shall name as respondents all persons alleged by the petition to be legal or actual physical custodians or guardians of the Child. In every such case, the Responsible Person shall be named as respondent. Summons shall be issued for all named respondents.

B. The Court, in every case filed under this Chapter where the court finds that the minor does not have a natural or adoptive Parent, guardian or custodian willing and able to exercise effective guardianship, or where the Parent, guardian, or custodian has been accused of abusing or Neglecting the minor, shall appoint, at no fee, a guardian *ad litem* at the first appearance of the case in court. The guardian *ad litem* shall be provided with all reports relevant to the case made to or by any agency or person and with reports of any examination of the Responsible Person made pursuant to this Chapter. The Court or the social services worker assigned to the case shall advise the guardian *ad litem* of significant developments in the case, particularly any further Abuse or Neglect of the Child involved. The guardian *ad litem* shall be charged in general with the representation of the Child's interest. To that end he shall make such further investigations as he deems necessary to ascertain the facts, talk with or observe the Child involved, interview witnesses and the foster Parents of the Child, and examine and cross-examine witnesses in both the adjudicatory and Dispositional Hearings and may introduce and examine his own witnesses, make recommendations to the Court concerning the Child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the Child.

C. If the prayer of the petition is granted, the costs of the proceeding, including guardian *ad litem* and expert witness fees, may be charged by the Court against the respondent.

D. It is not necessary that the guardian *ad litem* be an attorney.
(TL14-002, 4/18/97; PR15-030, 9/23/98; PR16-025, 8/23/99)

SECTION 6-305.14

CENTRAL REGISTRY.

A. There shall be established a central registry of Child protection in the Chickasaw Nation Indian Child Welfare Program for the purpose of maintaining a registry of information concerning each case of Child Abuse reported under this Chapter.

- B. The central registry shall contain but shall not be limited to:
1. all information in any written report received under this Chapter;
 2. a record of the final disposition of the report, including services offered and services accepted;
 3. the plan for rehabilitative treatment;
 4. the name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry; and
 5. any other information which might be helpful in furthering the purposes of this Chapter.

C. The director of the Chickasaw Nation Department shall designate a director of the central registry who shall have charge of said registry. Subject to available appropriations, the director shall equip his office so that data in the central registry may be made available during non-business hours through the use of computer technology. Such computerized records shall be password coded and only Chickasaw Nation Department personnel, judges, justices and law enforcement personnel shall have access to the password.

D. After a Child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this Section shall be permitted only if a sibling or offspring of such Child is before any person, party, or agency mentioned or defined in Section 6-305.9 or Section 6-305.2, and is a suspected victim of Child Abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a prosecutor or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

E. Unless an investigation of a report conducted pursuant to this Chapter determines there is some credible evidence of alleged Abuse, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the director of the central registry based upon the investigation made by the Chickasaw Nation Department or the BIA Law Enforcement Agency.

F. In all other cases, the record of the reports to the central registry shall be sealed no later than ten (10) years after the Child's eighteenth birthday. Once sealed, the record shall not otherwise be available unless the director of the central registry, pursuant to rules promulgated by the Chickasaw Nation Department and upon notice to the subject of the report, gives his personal approval for an appropriate reason. In any case and at any time, the director may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.

G. At any time the subject of a report may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry. However, the central registry is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interest of such person.

H. At any time subsequent to the completion of the investigation, a subject of the report may request the director to amend, seal, or expunge the record of the report. If the director refuses to do so or does not act within a reasonable time, but in no event later than thirty (30) days after such request, the subject shall have the right to a fair hearing before the Court to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this Chapter. The Chickasaw Nation Department shall be given notice of the hearing. The burden in such a hearing shall be on the Chickasaw Nation Department. In such hearings the fact that there was such a finding of Child Abuse or Neglect shall be presumptive evidence that the report was substantiated.

I. Written notice of any amendment, sealing, or expungement made pursuant to the provisions of this Chapter shall be given to the subject of such report and to the Chickasaw Nation Department. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.

J. Any person who willfully permits or who encourages the release of data or information contained in the central registry to persons not permitted access to such information by this Chapter shall be subject to a civil penalty not in excess of five hundred dollars (\$500.00) and any actual damages sustained.

K. The central registry shall adopt such rules and regulations as may be necessary to encourage cooperation with other tribes, states and the National Center on Child Abuse and Neglect.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-305.15

CONFIDENTIALITY OF RECORDS.

A. Except as provided in this Section, reports of Child Abuse or Neglect and the name and address of any Child, family or informant or any other identifying information contained in such reports, shall be confidential and shall not be public information.

B. Disclosure of the name and address of the Child and family and other identifying information involved in such reports shall be permitted only when authorized by the Court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim of Child Abuse or Neglect and the death becomes a matter of public record, the subject of an arrest by a Law Enforcement Agency or the subject of the filing of a formal charge by a Law Enforcement Agency.

C. Any person who violates any provision of this Section shall be subject to a civil penalty of not more than five thousand dollars (\$5,000).

D. Only the following persons or agencies shall be given access to Child Abuse or Neglect records and reports:

1. the Law Enforcement Agency or Chickasaw Nation Department investigating a report of known or suspected Child Abuse or Neglect or treating a Child or family which is the subject of the report;
2. a physician who has before him a Child whom he reasonably suspects to be Abused or Neglected;
3. an agency having the legal responsibility or authorization to care for, treat, or supervise a Child who is the subject of a report or record or a Parent, guardian, legal custodian, or other person who is responsible for the Child's health or welfare;
4. any person named in the report or record who was alleged as a Child to be Abused or Neglected or, if the Child named in the report or record is a Child or is otherwise incompetent at the time of the request, his guardian *ad litem*;
5. a Parent, guardian, legal custodian, or other person responsible for the health or welfare of a Child named in a report, with protection for the identity of reporters and other appropriate persons;
6. a court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera

inspection unless that court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;

7. the central registry of Child protection;
8. all members of a Child Protection Team;
9. the prosecutor and attorneys for the parties with protection for the identity of reporters and other appropriate persons when necessary; and
10. such other persons as a court may determine, for good cause.

E. After a Child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this Section shall be permitted only if a sibling or offspring of such Child is before any person mentioned in Subsection D of this Section and is a suspected victim of Child Abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a prosecutor or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

**ARTICLE F
DEVELOPING FOSTER CARE HOMES**

Section 6-306.1	Responsibility.
Section 6-306.2	Licensing Foster Homes.
Section 6-306.3	Basic Standard for Foster Families.
Section 6-306.4	Basic Requirements of Foster Families.
Section 6-306.5	Income of Foster Families.
Section 6-306.6	Physical Facilities.
Section 6-306.7	Family Composition.
Section 6-306.8	Personal Characteristics.
Section 6-306.9	Foster Parenting Abilities.

SECTION 6-306.1 **RESPONSIBILITY.**

It shall be the responsibility of the Chickasaw Nation Department to recruit, screen, and license Foster Homes for Children in accordance with this Chapter. (TL14-002, 4/18/97)

NOTE: Solicitor's Office recommended removing Chapter 14, Sections 5-1401 thru 5-1408.45, from Title 5 of the Criminal Code and placing it in a more appropriate Title. Those Sections were moved to Title 6, Chapter 3, Articles A thru G.

SECTION 6-306.2 **LICENSING FOSTER HOMES.**

The Chickasaw Nation Department pursuant to rules not inconsistent with this Chapter which it shall develop and file with the Court Clerk's office, shall have the authority to license foster care homes for the care of Children. (TL14-002, 4/18/97)

SECTION 6-306.3 **BASIC STANDARD FOR FOSTER FAMILIES.**

In considering Indian foster Parents, the primary consideration should be the Parents' capacity to provide love and understanding to a Child or Children in distress. (TL14-002, 4/18/97)

SECTION 6-306.4 **BASIC REQUIREMENTS OF FOSTER FAMILIES.**

Foster families shall meet the following personal criteria:

1. the age of foster Parent(s) shall be a consideration only as it affects their physical capability, flexibility, and ability to care for a specific Child;

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2. a written statement from a physician, regarding the foster Parent(s) and their Children's general health, specific illnesses, or disabilities shall be a routine part of the study evaluation process. Foster Parents(s) and all other Adults and the Children present in the home shall submit a written report verifying that they have taken tuberculin tests and have been found free of disease; other tests may be required as indicated; and

3. Physical handicaps of foster Parent(s) shall be a consideration only as it affects their ability to provide adequate care to foster Children or may affect an individual Child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when indicated.

(TL14-002, 4/18/97)

SECTION 6-306.5

INCOME OF FOSTER FAMILIES.

A. When the agency does not have a plan for paying foster families a salary, it shall determine that the foster family's income is stable and sufficient for the maintenance of the family and reimbursement for the foster family's own expenses.

B. Employment of foster Parent(s) outside the home:

1. In two-Parent homes it is preferable, in most instances, that both foster Parents shall not be employed outside the home so that one Parent is available for the parenting that the Child requires. The agency shall make decisions regarding such situations on the basis of what is the best interest of the Child.

2. When both Parents in a two-Parent home and when single Parents are employed, it is preferable that the home be used for school age Children, and only when there are suitable plans (approved by the agency) for care and supervision of the Child after school and during the summer while Parent(s) are at work.

(TL14-002, 4/18/97)

SECTION 6-306.6

PHYSICAL FACILITIES.

A. Physical facilities of the Foster Home shall present no hazard to the safety of the foster Child.

B. Foster Homes shall meet zoning and housing requirements and/or codes as set by the public safety department for individual family dwellings.

C. Physical standards for the Foster Home shall be set according to individual living standards for the community in which the Foster Home is located. The standards shall be

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sufficient to assure a degree of comfort which will provide for the well-being of the family and its self-respect in the community in which it resides.

D. Comfort and privacy:

1. It is preferable for no more than two Children to share sleeping rooms.
2. The sharing of sleeping rooms by Children of opposite sexes is undesirable, especially for foster Children who may be experiencing difficulties in the development of their sexual identities, attitudes, and behavior.
3. Children, other than infants and during emergencies (illness), shall not share sleeping quarters with Adults in the household.
4. Individual space shall be provided for the Child's personal possessions.
5. In all instances when exceptions are necessary, the exceptions shall be for Children under two years of age or when special cultural, ethnic, or socioeconomic circumstances create a situation in which such exceptions will not be to the detriment of the Child.

E. Foster family homes shall be accessible to schools, recreation, churches, other community facilities, and special resources (such as medical clinics) as needed.

F. If the home is otherwise suitable, the foster family shall be provided with all available assistance in meeting the above requirements, standards, and/or codes.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-306.7

FAMILY COMPOSITION.

A. Two Parents shall be selected in most cases; however, single Parents shall be selected when they can more effectively fulfill the needs of a particular Child.

B. The presence of other Children (either own or foster), and other Adults (i.e., Grandparents, Aunts, etc. or unrelated persons) shall be taken into consideration in terms of how they might be affected by or have an effect upon another Child.

C. The number and ages of Children in a home (both own and foster) shall be considered on an individual basis, taking into account the foster Parent's(s') ability(ies) to meet the needs of all Children present in the home, physical accommodations of the home, and especially the effect which an additional Child would have on the family as a unit. It is preferable that:

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1. foster Parent(s) shall care for not more than two (2) infants (under two), including the foster Parent's own Children;
2. foster families should not have more than a total of six (6) Children, including foster Children and foster Parent's(s) own Children, in the Foster Home. Exceptions shall be made in order to keep siblings together;
3. the age range of the Children in a Foster Home shall be similar to that in a "normal" family in order to lessen competition and comparisons;
4. all placement situations shall consider the effect of having some Children in the Foster Home whose Parent(s) visit them and other Children whose Parent(s) do not; and
5. a Foster Home shall not provide placements for more than one (1) agency at a time without a written agreement delineating the responsibilities of all parties involved.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-306.8

PERSONAL CHARACTERISTICS.

Prospective foster Parent(s) shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character. Such characteristics are reflected in the following:

1. psycho-social history, including significant Childhood relationships and experiences (Parent-Child, sibling, or other relationships);
2. role identification and acceptance;
3. reactions to experiences of separation and loss (through death, desertion, etc.);
4. education, employment, and patterns of interpersonal relationships;
5. general social, intellectual and cultural level of the family;
6. level of everyday functioning:
 - a. home and money management ability;
 - b. daily routine and habits; and

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- c. reactions to stress;
 - 7. affect responses (ability to give and receive love, deal with loss, separation and disappointment, etc.);
 - 8. moral, ethical and spiritual qualities of the family;
 - 9. religious affiliation and habits; and
 - 10. hobbies, special interests, skills, and talents.
- (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-306.9

FOSTER PARENTING ABILITIES.

An assessment of prospective foster Parent's(s') parenting ability regarding a specific Child shall take into account the following:

- 1. motivation for application at this time;
- 2. characteristics and number of Children best suited to foster family;
- 3. existing family relationships, attitudes, and expectations regarding own Children and Parent-Child relationships, especially where such existing attitudes and relationships might affect the foster Child;
- 4. attitudes of significant members of the extended family regarding Child placement;
- 5. ability to accept and love the Child as he is;
- 6. capacity to absorb the Child into family life functioning without disruption;
- 7. capacity of Parent(s) to provide for foster Child's needs while giving proper consideration to own Children;
- 8. own Children's attitudes towards accepting foster Child;
- 9. realistic assessment of positive and negative aspects of foster parenthood;

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10. personal characteristics necessary to provide continuity of care throughout Child's need for placement;
 11. flexibility to meet changing needs over the course of placement;
 12. ability to accept Child's relationship with own Parent(s);
 13. ability to relate to Neglecting and Abusing natural Parent(s);
 14. special ability to care for Children with special needs (physical handicaps, emotional disturbances, etc.);
 15. areas in which ongoing social work assistance may be needed; and
 16. ability to help a Child return home or be placed for adoption and gain satisfaction from the experience.
- (TL14-002, 4/18/97; PR15-030, 9/23/98)

**ARTICLE G
ADOPTIONS**

Section 6-307.1	Jurisdiction over Adoptions.
Section 6-307.2	Purpose of Adoptions.
Section 6-307.3	Types of Adoptions.
Section 6-307.4	<i>In Camera</i> Determination of Citizenship Eligibility.
Section 6-307.5	Eligibility for Statutory Adoption.
Section 6-307.6	Eligibility to Adopt by Statutory Process.
Section 6-307.7	Consent to Statutory Adoption.
Section 6-307.8	Voluntary Relinquishment.
Section 6-307.9	When Consent of Parents Unnecessary.
Section 6-307.10	Notice and Hearing for Adoptions without Consent.
Section 6-307.11	Consent of Child.
Section 6-307.12	Petition.
Section 6-307.13	Investigation.
Section 6-307.14	Adoption Hearing.
Section 6-307.15	Report and Final Decree of Adoption.
Section 6-307.16	Contents of Adoption Order.
Section 6-307.17	Effect of Final Decree of Statutory Adoption.
Section 6-307.18	Records and Hearings Confidential.
Section 6-307.19	Certificates of Adoption.
Section 6-307.20	Foreign Decree.
Section 6-307.21	Adoption of Adults.
Section 6-307.22	Appeals.

SECTION 6-307.1 **JURISDICTION OVER ADOPTIONS.**

A. The Court shall have concurrent jurisdiction with the courts of any other sovereign having lawful authority regarding the adoption of any Adult Indian who resides or is domiciled within the jurisdiction of the Court.

B. The Court shall have concurrent jurisdiction with the courts of any other sovereign having lawful authority regarding the adoption of any person who resides or is domiciled within the jurisdiction of the Court, is unmarried, less than eighteen (18) years of age, and either:

1. is a member of an Indian tribe;
2. is eligible for membership in an Indian tribe, and is the biological Child of a member of an Indian tribe; or

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3. is one whose case has been transferred to the Court from the courts of a state, or tribe which has assumed jurisdiction over said Child; or

C. The Court shall have exclusive jurisdiction regarding the adoption by or of any Child or Adult who is a bonafide resident of or domiciled within the jurisdiction of the Court and a citizen of the Chickasaw Nation or eligible for citizenship of the Chickasaw Nation.
(TL14-002, 4/18/97; PR15-030, 9/23/98; PR25-004, 6/20/08)

SECTION 6-307.2 PURPOSE OF ADOPTIONS.

The purpose of an adoption is to establish a formal and legal family relationship between two (2) or more persons which, after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Chapter shall be so recognized by every agency and level of the government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage. (TL14-002, 4/18/97)

SECTION 6-307.3 TYPES OF ADOPTIONS.

There shall be three (3) types of adoptions recognized by the Chickasaw Nation, namely:

1. Statutory adoptions under Chickasaw Nation law entered into pursuant to this Chapter.

2. Statutory adoptions under the laws of some other tribe, state, or nation having jurisdiction over the parties and the subject matter.

3. Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by Chickasaw Nation common law until such time as the proper procedures for such adoptions are written down as a part of the Chickasaw Nation Code at which time traditional adoptions shall be governed by such procedure. Unless otherwise specifically provided by Chickasaw Nation law, traditional adoptions create a particular stated family relationship between persons for all purposes other than enrollment and the probate of decedents' estates.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-307.4 IN CAMERA DETERMINATION OF CITIZENSHIP ELIGIBILITY.

Whenever a Parent, whether biological or adoptive, has expressed a desire that the name of the Parent or the original or adoptive name of the Child and the Child's relationship to

themselves or others remain confidential, and a question arises as to the eligibility of the Child as a citizen of the Chickasaw Nation, the Court is authorized to receive from any source such information as may be necessary for a determination of the eligibility of such Child for citizenship, to review such information in camera and to enter its order declaring whether or not the Child is eligible for citizenship and the Child's blood quantum or other necessary non-identifying citizenship eligibility criteria. In doing so, the Court shall be provided with a complete Chickasaw Nation citizenship roll for the necessary period(s), and shall seal all records received to maintain their confidentiality of the parties. If the Court determines that such Child is eligible for citizenship, it shall enter its order declaring said fact and the Chickasaw Nation citizenship officers shall accept such order as conclusive proof of the eligibility of the Child for citizenship and register the Child accordingly. If the Court determines that such Child is not eligible for citizenship, it shall enter its order accordingly, and the Chickasaw Nation registration officers shall accept such order as proof of the ineligibility of said Child and refuse to register the Child unless other or further qualifications for citizenship are shown. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-307.5 **ELIGIBILITY FOR STATUTORY ADOPTION.**

Every Child within the jurisdiction of the Court at the time a petition for adoption is filed may be adopted subject to the terms and conditions of this Chapter. (TL14-002, 4/18/97)

SECTION 6-307.6 **ELIGIBILITY TO ADOPT BY STATUTORY PROCESS.**

The following persons are eligible to adopt a Child pursuant to this Chapter, and subject to the placement preferences of Section 6-304.9:

1. a husband and wife jointly;
2. either the husband or wife if the other spouse is a Parent of the Child;
3. an unmarried person who is at least twenty one (21) years old;
4. a married person who is legally separated from the other spouse and is at least twenty one (21) years old; and
5. in the case of a Child born out-of-wedlock, his unmarried father or mother.

(TL14-002, 4/18/97; PR16-025, 8/23/99)

SECTION 6-307.7

CONSENT TO STATUTORY ADOPTION.

A. Adoption of a Child may be decreed only if consent to such adoption has been executed and filed in the Court by:

1. both Parents, if living, or the surviving Parent, unless their parental rights have been terminated by judicial decree;
2. Parent(s) less than sixteen (16) years of age may give their consent only with the written consent of one (1) of the minor Parent('s)(s') Parents, legal guardian, or a guardian *ad litem* of the minor Parent appointed by the Court; or
3. if both Parents are deceased, or if their parental rights have been terminated by judicial decree, then the Traditional Custodian having physical Custody of said Child for the preceding six (6) month period, or an employee or the executive head of an agency having Custody of the Child by judicial decree with the specific authority, granted by the Court, to consent to the adoption of the Child.

B. Where any Parent or Indian custodian voluntarily consents to an adoption or Termination of parental rights, such consent shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the Parent or Indian custodian. The court shall certify that the Parent or Indian custodian either fully understood the explanation in English or that it was interpreted into a language that the Parent or Indian custodian understood.

C. Any consent given prior to or within ten (10) days after the birth of a Child shall not be valid.

D. Any consent given for the adoption of, or Termination of parental rights to a Child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the Child shall be returned to the Parent. (TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-307.8

VOLUNTARY RELINQUISHMENT.

Any Parent, legal custodian, Traditional Custodian, or other guardian of a Child may relinquish, subject to the terms of Section 5-1407.7.B, C, and D of this Chapter, any rights they may have to the care, Custody and control of a Child. A relinquishment shall be made by filing a petition in the Court with notice to the Chickasaw Nation Department, the prosecutor, Traditional Custodians, and the Parent(s) not a petitioner(s). The Traditional Custodians may intervene in

said action. The petition may relinquish generally, in which case the Court shall assume jurisdiction over the Child, or specially to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court. (TL14-002, 4/18/97)

SECTION 6-307.9

WHEN CONSENT OF PARENTS UNNECESSARY.

A. Adoption of a Child may be decreed without the consent required by Section 6-307.7 of this Chapter only if the Parents, or the Traditional Custodians having Custody if the Parents are deceased, have:

1. had their parental or custodial rights terminated by a decree of a court of competent jurisdiction;
2. been adjudicated incompetent by reason of mental disease, defect, injury or by abuse of alcohol or drugs and it appears, by a preponderance of the evidence, that such person will be unable to provide the necessary care and control of said Child for a significant period of time prior to the Child reaching majority;
3. for a period of twelve (12) months immediately preceding the filing of the petition for adoption, willfully failed, refused or Neglected to provide and contribute to the support of their Child either:
 - a. in substantial compliance with any decree of a court of competent jurisdiction ordering certain support to be contributed; or
 - b. if no court order has been made ordering certain support, then within his available means through contribution of financial support, physical necessities such as food, clothing and shelter contributions, or by performing labor or other services for and at the request of the person or agency having Custody, or
4. been finally adjudicated guilty of a felony and sentenced to death or to a term of imprisonment which is likely to prevent release of the Parent for a period such that the Parent will be unable to provide the necessary care and control of said Child for a significant period of time prior to the Child reaching majority.

B. In such cases, it shall not be necessary to obtain the consent of such Parent or to terminate the parental rights of such Parent prior to adoption of the Child.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-307.10

NOTICE AND HEARING FOR ADOPTIONS WITHOUT CONSENT.

Before the Court hears a petition for adoption without the consent of the Parents as provided by Section 6-307.9, of this Chapter, except proceedings pursuant to Subsection 6-307.9A, the person having authority to consent to the adoption or the person petitioning for the adoption shall file an application for adoption without consent setting out the reason the consent of the other person is not necessary. The application shall be set for hearing at a date and time certain and the application shall contain the name of the Child to be adopted; the time, date and place of the hearing; the reason that the Child is eligible for adoption without the consent of the Parent, guardian, or custodian; and a notice that the adoption may be ordered if the Parent, guardian, or custodian does not appear at the hearing and show cause why his consent is necessary. The application and notice shall be served on the Parent, guardian or custodian whose consent is alleged to be unnecessary in the same manner that civil summons is served. The hearing on the application shall be at least twenty four (24) hours prior to the hearing on the adoption. (TL14-002, 4/18/97)

SECTION 6-307.11

CONSENT OF CHILD.

Whenever a Child be of sufficient maturity and understanding the Court may, and in every case of a Child over twelve (12) years of age the Court shall, require the consent of the Child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such Child in private concerning the adoption prior to approving the Child's consent. (TL14-002, 4/18/97)

SECTION 6-307.12

PETITION.

A. A Petition for adoption shall be filed in duplicate, verified by the petitioner(s), and shall specifically state:

1. the full names, ages and places of residence of the petitioner(s), and, if married, the place and date of his (their) Marriage;
2. his (their) relationship with the Child, if any, and his (their) tribal affiliation by blood and membership, if any;
3. when and from whom the petitioner(s) acquired or intend to acquire physical Custody of the Child;
4. the names of the Child's biological Parents and their tribal affiliation by blood and membership, including tribal roll numbers, if known;

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5. the date and place of birth of the Child including the jurisdiction issuing the birth certificate for said Child, the Child's sex, race, and tribal affiliation by blood and membership, including tribal roll number, if known;

6. the name used for the Child in the proceeding and, if a change in name is desired, the new name;

7. that it is the desire of the petitioner(s) that the relationship of Parent and Child be established between him (them) and the Child;

8. a full description and statement of the value of all property owned or possessed by the Child;

9. the facts, if any, which excuse the consent of the Parents or either of them to the adoption; and

10. the facts which bring the Child within the jurisdiction of the Court.

B. Any required consents to the adoption may be attached to the petition, or filed with the Court prior to entry of a decree of adoption.
(TL14-002, 4/18/97)

SECTION 6-307.13 **INVESTIGATION.**

A. Upon the filing of a petition for adoption, the Court shall order an investigation to be made:

1. by the agency having Custody or legal guardianship of the Child;

2. in other cases, by the state, Bureau of Indian Affairs, or a tribal department; or

3. by a person qualified by training or experience, designated by the Court.

B. The Court shall further order that a report of such investigation shall be filed with the Court by the designated investigator within the time fixed by the Court and in no event more than sixty (60) days from the issuance of the order for investigation, unless time therefor is extended by the Court.

C. Such investigation shall include the conditions and antecedents of the Child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to

determine whether the proposed home is a suitable one for the Child; and any other circumstances and conditions which may have bearing on the adoption and of which the Court should have knowledge. In this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge.

D. The Court may order agencies named in Subsection A above located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate. The report of such investigation shall become a part of the files in the case, and shall contain a definite recommendation for or against the proposed adoption and state reasons therefor.

E. Where the adopting Parent is the spouse of a Parent, or in the event that a report, as outlined above deemed adequate for the purpose of the Court, has been made within the six (6) months next preceding the filing of the petition for adoption, the Court in its discretion, may waive the making of an investigation and the filing of a report.

F. Upon the filing of the report, the investigator shall serve written notice upon the petitioners that the report has been filed with the Court, provided that the report shall remain confidential and the contents of the report shall not be divulged to the petitioners except upon the consent of the investigating officer and the Court, and only released to the Chickasaw Nation Department and the prosecutor.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-307.14

ADOPTION HEARING.

At any time after the written investigation report has been filed, the Court, upon motion or request of the petitioners or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive Parent or Parents and adoptive Child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by a member of the Bar of the Court or by an unpaid personal representative at their request, with the approval of the Court. The Judge shall examine all persons appearing separately and, if satisfied as to the suitability of the Child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive Parents, and that the best interest of the Child will be promoted by the adoption, may enter a final decree of adoption or may place the Child in the legal Custody of the petitioners for a period of not more than six (6) months prior to entering a final decree of adoption, or, if the Court is satisfied that the adoption will not be in the best interests of the Child, the petition shall be denied and the Child's guardian instructed to arrange suitable care for the Child and the Court may request the Chickasaw Nation agencies, federal agencies or other agencies to provide services to assist in the placement and the care of the Child, or, in the case of

need, refer the matter to the Chickasaw Nation Department and prosecutor for the purpose of determining whether an involuntary juvenile petition should be filed. (TL14-002, 4/18/97)

SECTION 6-307.15 **REPORT AND FINAL DECREE OF ADOPTION.**

If the Court does not enter a final decree of adoption at the time of the hearing for adoption but places the Child in the legal Custody of the petitioner(s), within six (6) months after the Child has been in the Custody of the petitioner(s), the Court shall request a supplementary written report as to the welfare of the Child and the current situation and conditions of the adoptive home and the adoptive Parents. If the Court is satisfied that the interests of the Child are best served by the proposed adoption, a final Decree of Adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the Child. In any case where the Court finds that the best interests of the Child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the Child shall be made and the Court may request tribal agencies or federal agencies or other agencies authorized to provide services to assist in the placement and the care of the Child. (TL14-002, 4/18/97)

SECTION 6-307.16 **CONTENTS OF ADOPTION ORDER.**

The final order of adoption shall include such facts as are necessary to establish that the Child is within the jurisdiction of the Court and eligible for adoption and that the adoptive Parents and home are adequate and capable for the proper care of the Child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings, the new name of the Child, if any, and that a Parent-Child relationship exists between the petitioner(s) and the Child. (TL14-002, 4/18/97)

SECTION 6-307.17 **EFFECT OF FINAL DECREE OF STATUTORY ADOPTION.**

A. After a final decree of adoption pursuant to this Chapter is entered, the Parent-Child relationship, and all the rights, duties, and other legal consequences of the natural relation of a Parent and a Child, shall thereafter exist between such adopted Child, the adopting Parents, and the kindred of the adopting Parents. The adopted Child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the Child in accordance with law as if such Child were the natural Child of the adopting Parent(s).

B. After a final decree of adoption pursuant to this Chapter is entered, the natural Parents of the adopted Child, unless they are the adoptive Parents or the spouse of an adoptive Parent, shall be relieved and terminated from all parental rights and responsibilities for said Child, including the right to inherit from the Child, provided that the Child shall remain eligible

to inherit from said natural Parents and retain all rights to membership in a tribe by virtue of his birth to said natural Parents.

C. Unless the Traditional Custodians and Grandparents of a Child have given their consent to the adoption of the Child or have had their custodial rights terminated in the same manner that a Parent consents or has his rights terminated, the Court, at any time within two (2) years after the final decree of adoption or the refusal of the adoptive Parents to allow visitation, whichever is later, may, upon application of a natural Traditional Custodian or a natural Grandparent, order reasonable visitation rights in favor of said person if the Court deems such visitation in the best interest of the Child. The Court may enforce such visitation rights and make orders thereto at any time after timely filing of an application therefore. Notice of such application shall be served upon the adoptive Parents as a summons is served.

D. Challenge of a statutory adoption, when not made within two (2) years of the date the final decree is entered, shall be barred.
(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-307.18

RECORDS AND HEARINGS CONFIDENTIAL.

Unless the Court shall otherwise order:

1. All hearings held in proceedings under this Chapter shall be confidential and shall be held in closed court without admittance of any person other than the interested parties, including Traditional Custodians, representatives of the Chickasaw Nation Department, when deemed necessary by the Court, persons whose presence is requested by the parties in private before the Court after the exclusion of all other persons and the counsel for the parties.

2. All papers, records and files pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection. No person shall have access to such records except:

a. upon order of the Court for good cause shown.

b. upon the adopted person reaching the age of eighteen (18), the adopted person may review the records unless the natural Parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including tribal membership and degree of blood, shall be deleted prior to allowing the adopted person access to the records;

c. upon request of the Traditional Custodians and natural Grandparents, unless the natural Parents have, by affidavit, requested anonymity, in which case the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting Parents request anonymity, by affidavit, the Traditional Custodians and natural Grandparents may have access to the records only by order of the Court for good cause shown, and then only if the Court deems such request in the best interest of the Child; and

d. for the purpose of obtaining the enrollment of the Child with another Indian tribe, the Court may upon request of an enrollment officer of that tribe, certify to that officer pertinent facts to enable that officer to determine the eligibility of the Child for membership in that tribe subject to the written guarantee, with an undertaking, if deemed necessary by the Court, that such facts will remain confidential and divulged only to those persons who must know the facts to obtain the enrollment of the Child. In the alternative, and in cases where the natural or adoptive Parents have, by affidavit, requested anonymity, the Court may certify a copy of the record of the case to a Judge of the court of the other tribe for an in camera review only, or allow such Judge to review the record in the Court, *in camera*, for the purpose of said Judge certifying to his tribe that the Child is eligible for membership in that tribe.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-307.19

CERTIFICATES OF ADOPTION.

A. For each adoption or annulment of adoption, the Court shall prepare, within thirty (30) days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the state or other jurisdiction having issued the birth certificate of said Child and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law.

B. Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate, shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.

C. One (1) certified copy of the form certificate, petition and decree of adoption shall be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a Judge's certificate showing:

1. the original and adoptive name and tribal affiliation of the Child;

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2. the names, addresses, tribal affiliation and degree of blood when known of the biological Parents;

3. the names and addresses of the adoptive Parents;

4. the identity of any agency having files or information relating to the adoptive placement; and

5. any affidavit of the biological Parent(s) requesting that his (their) identity remain confidential.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-307.20

FOREIGN DECREE.

When a Parent-Child relationship has been created by a decree of adoption of any court of competent jurisdiction of any other nation or its political subdivisions having authority to enter such decrees, the rights and obligations of the parties as to matters within the jurisdiction of the Chickasaw Nation shall be determined by Section 6-307.17 of this Title 6. (TL14-002, 4/18/97)

SECTION 6-307.21

ADOPTION OF ADULTS.

A. An Adult person may be adopted by any other Adult person with the consent of the person to be adopted, or his guardian, if the Court shall approve and with the consent of the spouse of the adopting Parent, if any, filed in writing with the Court. The consent of the adopted Adult's Parents shall not be necessary unless said Adult has been adjudicated incompetent, nor shall an investigation be made. Such adoption shall follow the procedure otherwise set forth herein. Such adoption shall create a Parent-Child relationship of Parent and Child between the parties, but shall not destroy the Parent-Child relationship between the biological Parents unless specifically requested by the adopted Adult in writing in open court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance but not including tribal enrollment eligibility, shall be that the adopted person is the offspring of both sets of Parents equally.

B. Proceedings and records relating to the adoption of an Adult shall be open to the public as are the records of other civil cases.

(TL14-002, 4/18/97; PR15-030, 9/23/98)

SECTION 6-307.22

APPEALS.

An appeal to the Supreme Court may be taken from any final order, judgment or decree rendered hereunder by any person aggrieved thereby in the manner provided for civil appeals,

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after making an appeal to and a final decision of the Appellate Division of the Court of Indian Offenses for the Chickasaw Nation. (TL14-002, 4/18/97)

**ARTICLE H
GUARDIANSHIPS AND CONSERVATORSHIPS;
CHILDREN AND INCOMPETENTS**

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Section 6-308.4	Applicable Law.
Section 6-308.5	Reserved.
Section 6-308.6	Definition of Guardian.
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Section 6-308.26	Appointment of Guardian of Minor.
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SECTION 6-308.1

SHORT TITLE.

This Act shall be known and may be cited as the Chickasaw Nation Guardianship and Conservatorship Act of 2003 ("Act"). (PR20-014, 6/27/03)

SECTION 6-308.2

PURPOSE.

A. It is the purpose of this Act to promote the general welfare of all Chickasaw citizens by establishing a system of General and Limited Guardianships for Minors and for Incapacitated and Partially Incapacitated Persons which provides for the protection of their rights and the management of their financial resources.

B. It is the purpose of the system of General and Limited Guardianships for Incapacitated and Partially Incapacitated Persons established by this Act to provide for the participation of such persons, as fully as possible, in the decisions which affect them. It is the intent of the Chickasaw Tribal Legislature:

1. that the courts of the Chickasaw Nation shall exercise the authority

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conferred by this Act so as to encourage the development of maximum self-reliance and independence of the Incapacitated or Partially Incapacitated Person and make appointive and other orders only to the extent necessitated by the mental and adaptive limitations or other condition of the Incapacitated or Partially Incapacitated Person warranting the procedure;

2. that in performing their duties and exercising their powers, Guardians and Limited Guardians of Incapacitated or Partially Incapacitated Persons shall:

a. assure, to the extent reasonably possible, that the rights of the Wards for whom they are appointed are protected;

b. encourage, to the extent reasonably possible, Incapacitated or Partially Incapacitated Persons to participate to the maximum extent of their abilities in all decisions which affect them and to act on their own behalf on all matters in which they are able to do so within the limitations imposed by the Court; and

c. as appropriate, assist their Wards to develop or regain to the maximum extent possible their capacity to meet the essential requirements for their health or safety, or to manage their financial resources or both.

SECTION 6-308.3

JURISDICTION.

Territorial jurisdiction, subject matter jurisdiction and personal jurisdiction shall be in accordance with Title 5, Chapter 2, Article A of the Chickasaw Nation Code.

SECTION 6-308.4

APPLICABLE LAW.

Applicable law shall be in accordance with Title 5, Chapter 2, Article A of the Chickasaw Nation Code.

SECTION 6-308.5

RESERVED.

(PR20-014, 6/27/03)

SECTION 6-308.6

DEFINITION OF GUARDIAN.

A "Guardian" is a Person appointed by the Court to take care of the Person or property of another. "Guardian" includes Persons appointed as General and Limited Guardians of the Person,

General and Limited Guardians of property, and Special Guardians, but does not include Persons appointed as Guardians *Ad Litem*.

SECTION 6-308.7 **DEFINITION OF WARD.**

A Person over whom a Guardian is appointed and a Person over whose property a Guardian or Conservator is appointed is called a "Ward."

SECTION 6-308.8 **CLASSIFICATIONS OF GUARDIANS.**

Guardians are either General, Limited or Special.

SECTION 6-308.9 **GENERAL AND LIMITED GUARDIANS.**

A. A "General Guardian" is a Guardian of the Person or of all the property of the Ward or of both such Person and property.

B. A "Limited Guardian" is a Person authorized by the Court to exercise limited powers over the Person of the Ward, or over the property of the Ward, or over both such Person and property.

SECTION 6-308.10 **APPOINTMENT OF SPECIAL GUARDIAN.**

A Special Guardian may be appointed by the Court pursuant to Section 6-308.57 of this Act.

SECTION 6-308.11 **DEFINITIONS.**

A. As used in this Act:

1. "Abuse" means the intentional infliction of physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter, or medical care to an Incapacitated Person, Partially Incapacitated Person, or a Minor by a Guardian or other Person responsible for providing these services. "Abuse" may be a noun, verb or adjective;

2. "Confidential Information" means medical records, physical, psychological or other Evaluations of a Ward or subject of the proceeding, initial and subsequent Guardianship Plans, reports of Guardians, Limited Guardians and conservators submitted to the Court in connection with a proceeding pursuant to the provisions of this Act;

3. "Conservator" means a Guardian, protector or preserver. A Conservator is appointed by a court to manage the affairs of an Incompetent Person or to liquidate business or to manage the estate of one who is unable to manage property and business affairs effectively.

4. "Court" means the District Court or Supreme Court of the Chickasaw Nation as appropriate.

5. "Estate" means the property of the Person whose affairs are subject to a Guardianship Proceeding;

6. "Evaluation" means a professional assessment of:

a. the ability of an Adult to receive and evaluate information effectively or communicate decisions;

b. the impact of any impairment of these skills on the capacity of the individual to meet the essential requirements for his physical health or safety, or to manage his financial resources; and

c. the services necessary to provide for the Ward;

7. "Exploitation" means an unjust or improper use of the resources of an Incapacitated Person, a Partially Incapacitated Person, or a Minor for the profit or advantage, pecuniary or otherwise, of a Person other than an Incapacitated Person, a Partially Incapacitated Person, or a Minor through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense;

8. A "Guardian of an Incapacitated Person" means a Person who has been appointed by a court to serve as the Guardian of an Incapacitated Person to assure that the essential requirements for the health and safety of said Person are met, to Manage the Estate or financial resources of said Person, or both;

9. "Guardian *Ad Litem*" means, with respect to a Guardianship Proceeding, a Person appointed by a court to assist the subject of the proceeding in making decisions with regard to the Guardianship Proceeding, or to make said decisions when the subject of the proceeding is wholly incapable of making said decisions even with assistance. The Chickasaw Nation Court Advocate may serve as a Guardian *Ad Litem* as long as such appointment would not cause a conflict of interest as to any Party, the Court Advocate or the Court;

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10. "Guardianship Plan" means the plan for the care and treatment of a Ward, the plan for the management of the financial resources of a Ward, or both;

11. "Guardianship Proceeding" means a proceeding for the appointment of a Guardian, or for other orders regarding the condition, care or treatment or for the management of the financial resources of a Ward;

12. "Guardianship Report" means any report required by this Act;

13. "Incapacitated Person" means a Person eighteen (18) years of age or older:

a. who is impaired by reason of:

i. mental illness;

ii. mental retardation or developmental disability;

iii. physical illness or disability;

iv. drug or alcohol dependency; or

v. such other similar cause; and

b. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that said Person:

i. lacks the capacity to meet essential requirements for his physical health or safety; or

ii. is unable to manage his financial resources. Whenever in the Chickasaw Nation Code "Incompetent Person" appears and refers to a Person who has been found by a court to be an Incompetent Person because of an impairment or condition described in this Paragraph, it shall have the same meaning as "Incapacitated Person" but shall not include a Person who is a Partially Incapacitated Person;

14. "Intangible Personal Property" means cash, stocks and bonds, mutual funds, money market accounts, certificates of deposit, insurance contracts, commodity

accounts, and other assets of a similar nature;

15. "Letters" means a document issued by a court subsequent to the appointment of a Guardian which designates the name of the Guardian and specifies the authority and

powers of said Guardian. Such document shall be endorsed thereon with the oath of the Guardian that he will perform the duties of his office as Guardian according to law;

16. A "Limited Guardian" means a Person appointed by a court to serve as the Guardian of a Partially Incapacitated Person and who is authorized by a court to exercise only:

a. some of the powers of a Guardian of the Person or whose power as Guardian of the Person extends only to certain matters pertaining to the care or control of the Ward as specified by the court, or

b. certain powers as Guardian of the property over the Estate or financial resources of the Ward, or whose powers as Guardian of the property extend only to some portion of the Estate or financial resources of the Ward;

17. "Manage Financial Resources" or "Manage the Estate" means those actions necessary to obtain, administer, and dispose of real property, business property, benefits and income, and to otherwise manage personal financial or business affairs;

18. "Minor" means a Person under eighteen (18) years of age;

19. "Neglect" means the failure to provide protection for an Incapacitated Person, a Partially Incapacitated Person, or a Minor who is unable to protect the Person's own interest; or the failure to provide adequate shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the Person's own action or inaction because of a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury. "Neglect" may be a noun, verb or adjective;

20. "Organization" means a corporation, trust, business trust, partnership, association, or other legal entity;

21. "Partially Incapacitated Person" means an Incapacitated Person whose impairment is only to the extent that without the assistance of a Limited Guardian said Person is unable to:

a. meet the essential requirements for his physical health or safety; or

b. manage all of his financial resources or to engage in all of the activities necessary for the effective management of his financial resources. A finding that an individual is a Partially Incapacitated Person shall not constitute a finding of legal incompetence. A Partially Incapacitated Person shall be legally competent in all areas other than the area or areas specified by a court in its dispositional or subsequent orders. Such Person shall retain all legal rights and abilities other than those expressly limited or curtailed in said orders;

22. "Party" means the Person or entity filing a petition, application, motion, acceptance of a testamentary nomination, or objection; the subject of a Guardianship Proceeding; and the Guardian, the Guardian *Ad Litem* and the conservator, if any such Persons have been appointed;

23. "Person" means an individual;

24. "Property" means real Property, personal Property, income, any interest in such real or personal Property and includes anything that may be the subject of ownership;

25. "Subject of the Proceeding" means a Minor or an Adult:

a. who is the subject of a petition requesting the appointment of a Guardian, Limited Guardian or Special Guardian;

b. for whom a Guardian or Limited Guardian has been appointed by a court, or

c. an Adult for whom a conservator is requested or appointed; and

26. "Surcharge" means the imposition of personal liability by a court on a Guardian or Limited Guardian for willful or negligent misconduct in the administration of the Estate or other financial resources of a Ward.

B. Medical Treatment:

1. Nothing in this Section shall be construed to mean an Incapacitated Person, a Partially Incapacitated Person, or a Minor is Abused or Neglected for the sole reason that a Guardian or other Person responsible, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practices of

a recognized church or religious denomination, for the treatment or cure of disease or remedial care of the Person or Minor in their trust, and, in the case of an Adult, in accordance with the practices of or the express consent of the Incapacitated or Partially Incapacitated Person.

2. Nothing contained in this Subsection B shall prevent a court from immediately assuming Custody of a Minor and ordering whatever action may be necessary, including medical treatment, to protect the Minor's health or welfare.

SECTION 6-308.12 **APPLICABILITY OF ACT; POWER OF APPOINTMENT;
NOT A LIMITATION OF PARENTAL RIGHTS.**

A. Except as otherwise specifically provided by law, this Act applies to:

1. Minors;
2. Incapacitated and Partially Incapacitated Persons; and
3. Property located in the Chickasaw Nation of nondomiciliaries who are Minors or Incapacitated or Partially Incapacitated Persons, or Property coming into the control of a Guardian who is subject to the laws of the Chickasaw Nation.

B. No Person, whether a Parent or otherwise, has any power as a Guardian, except by appointment by a court. The provisions of this Act shall not be construed to limit the parental rights of Parents as the natural Guardians of their Children.

SECTION 6-308.13 **APPOINTMENT OF GUARDIAN; EXCLUSIVE
JURISDICTION.**

A. A Guardian of the Person or Property, or both, of a Person residing within the territorial jurisdiction of the Chickasaw Nation, who is a Minor, or an Incapacitated or Partially Incapacitated Person, may be appointed in all cases by the Court as provided in this Act.

B. After the service of notice in a proceeding seeking the appointment of a Guardian or other order, in subsequent proceedings pertaining to the Guardianship of a Ward and until termination of the proceeding, the Court has exclusive jurisdiction to determine:

1. the need for a Guardian or other order; and

2. how the Estate of the Ward shall be managed, expended, or distributed to or for the use of the Ward or the dependents of the Ward.

SECTION 6-308.14

**JURISDICTION OF COURT OVER GUARDIANS AND
GUARDIANSHIP PROCEEDINGS.**

A. In all cases the Court has exclusive jurisdiction to control such Guardian in the management and disposition of the Person and Property of the Ward.

B. The Court has jurisdiction over Guardianship Proceedings, and has the following powers, which must be exercised in the manner prescribed by statute, to:

1. Appoint and remove Guardians for Minors and for Incapacitated and Partially Incapacitated Persons;
2. Issue and revoke Letters of Guardianship;
3. Control the conduct of Guardians with regard to the care and treatment provided to their Wards;
4. Control the conduct of Guardians with regard to the management of the financial resources of their Wards, including but not limited to the power to:
 - a. compel Guardians to submit plans, reports, inventories and accountings to the Court;
 - b. compel payment and delivery by Guardians of Property belonging to their Wards;
 - c. order the payment of debts, the sale of Property, and order and regulate the distribution of Property which has been placed under the control or management of a Guardian, and
 - d. settle the accounts of Guardians;
5. Appoint appraisers of the Property of Wards;

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6. Compel the attendance of witnesses and the production of documents and Property;

7. After a petition has been filed for appointment of a Guardian for a Minor, and for Incapacitated Person or Partially Incapacitated Person, make or modify any temporary order of Guardianship during the progress of the proceedings that would be in the best interest of the Ward. Any such temporary order may be entered ex parte with written notice sent to all parties directing them to appear before the Court, at a time and place therein specified, not more than twenty (20) days from the time of making such order, to show cause why the order should not be granted for temporary Guardianship; and

8. Exercise all powers conferred by this Act and to make such orders as may be necessary for the exercise of said powers.

C. The Court shall establish by court rule a system for:

1. the filing of Guardianship and Conservatorship cases and records which distinguish them from probate cases; and

2. monitoring the filing of annual reports and inventories required by this Act for the purpose of assuring that the Court will be notified of annual reports as they fall due and whether or not said reports are filed.

SECTION 6-308.15

VENUE FOR GUARDIANSHIP PROCEEDINGS.

The venue for a Guardianship Proceeding is in the District Court of the Chickasaw Nation.

SECTION 6-308.16

JUDGE MAY ACT AT CHAMBERS OR IN COURT; PRACTICE.

A. The power conferred upon the Court in relation to Guardians and Wards may be exercised in chambers or elsewhere in the discretion of the Judge. Any hearing held pursuant to the provisions of this Act may be held at such place as the Court directs.

B. Any order appointing a Guardian must be entered as and become a decree of the Court.

C. Except as otherwise specifically provided by this Act, the provisions of the Chickasaw Nation Code relative to the Estates of decedents, so far as they relate to the practice in

the Court, apply to proceedings under this Act. The rules of civil procedure including the rules concerning discovery, vacation of orders and appellate review, govern proceedings subject to this Act.

SECTION 6-308.17 **GUARDIANS *AD LITEM* NOT AFFECTED.**

A. Nothing contained in this Act affects or impairs the power of the Court to appoint a Guardian *Ad Litem* to defend the interests of any Minor interested in any suit or matter pending therein.

B. At any point in a Guardianship Proceeding, the Subject of the Proceeding, his attorney, the Guardian of the Subject of the Proceeding or anyone interested in the welfare of the Subject of the Proceeding may file an application to have a Guardian *Ad Litem* appointed by the Court, or the Court on its own motion may appoint a Guardian *Ad Litem*. If not precluded by a conflict of interest, a Guardian *Ad Litem* may be appointed to represent several Persons or interests.

SECTION 6-308.18 **GUARDIAN OF PROPERTY OF PERSON NOT RESIDING
WITHIN THE CHICKASAW NATION.**

A Guardian of the Property, within the Chickasaw Nation, of a Person not residing therein, who is a Minor, or an Incapacitated or Partially Incapacitated Person, may be appointed by the Court as provided by this Act.

SECTION 6-308.19 **GUARDIAN POWERS.**

A Guardian has only those powers over the Person or the Property of the Ward, or both such Person and Property, as ordered by the Court pursuant to this Act.

SECTION 6-308.20 **POWER OF GUARDIAN OVER THE PERSON; CHANGE
OF WARD'S ABODE; POWER OF LIMITED GUARDIANS.**

A. A Guardian, including a Special Guardian, of the Person is charged with the Custody of the Ward, and must look to the support, health and education of the Ward. Except as provided herein, he may fix the place of abode of the Ward at any place within the territorial jurisdiction of the Chickasaw Nation, but not elsewhere, without permission of the Court and any change in the place of abode of a Ward shall be reported to the Court.

B. Limited Guardians of Partially Incapacitated Persons shall not have Custody of the Person of the Ward and shall have only those powers or controls over the Person of the Ward specifically ordered in a dispositional order or other order of the Court.

SECTION 6-308.21

**DUTIES OF GUARDIAN OF THE PROPERTY; POWERS;
FIDUCIARY DUTY.**

A. A Guardian of the Property must keep safely the Property of his Ward. He must not permit any unnecessary waste or destruction of the real Property, nor make any sale of such Property without the order of the Court, but must so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other Property of the Estate, and deliver it to the Ward or the successors of the Ward at the close of his Guardianship, in as good condition as he received it.

B. A Guardian of the Property, in relation to powers conferred pursuant to the provisions of this Act, shall act as a fiduciary and shall perform, diligently and in good faith, as a prudent Person would in managing his own Property, not with regard to speculation but with regard to conservation and growth, and the specific duties and powers assigned by the Court.

SECTION 6-308.22

CONFIDENTIAL INFORMATION.

A. Confidential Information filed with or submitted to the Court in conjunction with any proceeding pursuant to this Act, shall not constitute a public record and shall be sealed by the Court. Access to Confidential Information shall be strictly controlled. Except upon court order, no Confidential Information shall be disclosed to Persons other than:

1. the Subject of the Proceeding and the subject's attorney;
2. the Guardian *Ad Litem*;
3. if the subject of the Confidential Information is a Ward, the Guardian or Conservator of such Ward; and
4. if the subject of the Confidential Information is the Guardian or Conservator, the Ward and the subject's attorney, and the attorney of such Guardian or Conservator.

B. The fact of the existence of a Guardianship or Conservatorship of a Person or that Person's Estate shall not be considered Confidential Information.

SECTION 6-308.23

GUARDIANSHIP LETTERS.

Letters of Guardianship are evidence of the transfer of the management or administration of all assets, or the part thereof specified in the Letters, of a Ward to the Guardian. An order

terminating a Guardianship is evidence of transfer of the management or administration of all assets subject to the Guardianship from the Guardian to the Ward, or to successors of the Ward.

SECTION 6-308.24 **RESERVED.**

(PR20-014, 6/27/03)

SECTION 6-308.25 **TIME COMPUTATION.**

The time within which an act is to be done, as provided for in the Chickasaw Nation Code, shall be computed by excluding the first day and including the last day. If the last day is a legal holiday, it shall be excluded. The provisions of this Section are hereby declared to be a clarification

of the law as it existed prior to the effective date of this Act and shall not be considered or construed to be a change of the law as it existed prior to the effective date of this Act.

SECTION 6-308.26 **APPOINTMENT OF GUARDIAN OF MINOR.**

- A. The District Court, when it appears necessary or convenient, may appoint Guardians for the Persons and Estates, or either, or both of them, of Minors.
- B. Such appointment may be made on the verified petition of a relative or other Person on behalf of such Minor.
- C. Before making the appointment, the Court must cause notice of the hearing on the petition for appointment of a Guardian for a Minor to be given in the form required by the Court to the Minor himself if the Minor has attained the age of fourteen (14) as of the date the petition is filed. The Court shall also cause notice to be sent to the following Persons:
1. the then-living Parents of the Minor and any other Person having care of the Minor, if such Parent or Person is not one of the petitioners;
 2. if the Minor has no then-living Parent, then to one of the then-living Grandparents who is not one of the petitioners and who is not married to one of the petitioners; and
 3. if there is no such then-living Grandparent or if there is no such then-living Grandparent whose address is known to the petitioner, then notice shall be given to an Adult relative, if any, of the Minor, who resides within the territorial jurisdiction of the Chickasaw Nation.

D. Such notice shall be mailed to each Person, entitled to notice pursuant to this Section, at that Person's address as last-known to the petitioner, at least ten (10) days prior to the date set by the Court for hearing on the petition. Provided the Court may direct a shorter notice period if the Court deems such shorter notice period to be appropriate under the circumstances. If there is no Person other than the Minor who is entitled to notice, or if the address of any Person, other than the Minor, who is entitled to notice is not known to the petitioner, the petition shall so allege. The Court may direct that notice, other than notice to the Minor if the Minor has attained the age of fourteen (14), be waived or be given to any Person or Persons other than the Minor in such manner as the Court determines and directs.

SECTION 6-308.27 **GUARDIAN NOMINATIONS.**

A. A Guardian of the Person or Estate, or of both, of a Child born, or likely to be born, may be nominated by will or by other written instrument, to take effect upon the death of the Parent so nominating:

1. if the Child is born in wedlock, by either Parent or by both Parents.
2. if the Child is born out of wedlock, by the mother of the Child or by the natural father of the Child, if said natural father has acknowledged paternity or has been judicially determined to be the father of the Child at a paternity proceeding, or by both such mother and father.

B. A nomination made by a Parent who has relinquished parental rights pursuant to an adoption proceeding or whose parental rights have been terminated by a court of competent jurisdiction shall have no effect.

SECTION 6-308.28 **NOMINATION AND APPOINTMENT BY MINOR; AGE OF MINOR.**

If the Minor is under the age of fourteen (14) years, the Court may name and appoint his Guardian. If the Minor has attained the age of fourteen (14) years, the Minor may nominate his own Guardian, who, if approved by the Court, must be appointed accordingly.

SECTION 6-308.29 **PREFERENCE ORDER FOR CUSTODY OR GUARDIANSHIP.**

A. Custody should be awarded or a Guardian appointed in the following order of preference according to the best interests of the Child to:

1. a Parent or to both Parents jointly except as otherwise provided in Subsection B below;
2. a Grandparent;
3. a Person who was indicated by the wishes of a deceased Parent;
4. a relative of either Parent;
5. the Person in whose home the Child has been living in a wholesome and stable environment including but not limited to a foster Parent; or
6. any other Person deemed by the Court to be suitable and able to provide adequate and proper care and guidance for the Child.

B. Subject to Subsection E below, when a Parent having physical Custody and providing support to a Child becomes deceased or when the Custody is judicially removed from such Parent, the Court may only deny the noncustodial Parent Custody of the Child or Guardianship of the Child if:

1. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the determination of Custody or Guardianship action, the noncustodial Parent has willfully failed, refused, or Neglected to contribute to the Child's support:
 - a. in substantial compliance with a support provision or an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or
 - b. according to such Parent's financial ability to contribute to the Child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto, and
2. the denial of Custody or Guardianship is in the best interest of the Child;
3. the noncustodial Parent has abandoned the Child;
4. the parental rights of the noncustodial Parent have been terminated;

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5. the noncustodial Parent has been convicted of any crime regarding Child Abuse or any crime against public decency and morality in any jurisdiction;

6. the Child has been adjudicated deprived in any jurisdiction as a result of the actions of the noncustodial Parent and such Parent has not successfully completed any required service or treatment plan required by a court of competent jurisdiction; or

7. the Court finds it would be detrimental to the health or safety of the Child for the noncustodial Parent to have Custody or be appointed Guardian.

C. The Court may consider the preference of the Child in awarding Custody of the Child if the Child is of sufficient age to form an intelligent preference.

D. In every case involving the Custody of, Guardianship of or visitation with a Child, the Court shall consider evidence of ongoing domestic Abuse which is properly brought before it. If the occurrence of ongoing domestic Abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the Child to have Custody, Guardianship or unsupervised visitation granted to the abusive Person.

E. In every case involving the Custody of, Guardianship of or visitation with a Child, the Court shall determine whether any individual seeking Custody of, Guardianship of or visitation with a Child:

1. is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction; or

2. is residing with a Person who is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction.

F. There shall be a rebuttable presumption that it is not in the best interests of the Child to have Custody, Guardianship or unsupervised visitation granted to any individual who:

1. is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction; or

2. is residing with a Person who is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction.

SECTION 6-308.30

MINOR AT 14 YEARS OF AGE MAY NOMINATE GUARDIAN SUBJECT TO APPROVAL OF COURT.

When a Guardian has been appointed by the Court for a Minor under the age of fourteen (14) years, the Minor, at any time after he has attained age fourteen (14), may nominate his own Guardian, subject to the approval of the Court.

SECTION 6-308.31 **APPOINTMENT OF GUARDIAN WHEN MINOR HAS
ATTAINED 14 YEARS OF AGE.**

If a Guardian nominated by a Minor who has attained the age of fourteen (14) years is not approved by the Court or if, after being notified by the Court, the Minor neglects for ten (10) days to nominate a suitable Person, the Court may name and appoint a Guardian in the same manner as if the Minor was under the age of fourteen (14) years.

SECTION 6-308.32 **APPOINTMENT OF PARENTS AS GUARDIANS.**

A Minor's Parent who is competent to transact his or her own business and not otherwise unsuitable or disqualified by law to serve as the Guardian of said Minor, shall be entitled to the Guardianship of the Minor until the Minor has attained the age of fourteen (14) years. The Parent petitioning the Court for appointment as Guardian of the Minor must have the endorsement or nomination of the other Parent, if the natural Parents of the Minor are married and living together. In cases where both Parents are separately seeking appointment as Guardian of the Minor, the Court may, upon full investigation, appoint the Parent who in the judgment of the Court is the most competent to look after the interest of said Minor.

SECTION 6-308.33 **APPOINTED GUARDIAN IN CHARGE OF EDUCATION.**

If the Minor has no father or mother living who is competent to have charge of the education of the Minor, the Guardian appointed by the Court shall have the same.

SECTION 6-308.34 **EXPENSES OF EDUCATION AND MAINTENANCE OF
MINOR MAY BE DEFRAYED OUT OF MINOR'S
PROPERTY.**

A. If any Minor, having a Parent or Parents living, has Property, the income of which is sufficient for his maintenance and education in a manner more expensive than such Parent or Parents can reasonably afford, regard being had to all of the circumstances of the case, the expenses of the education and maintenance of such Minor may be defrayed out of the income of the Property of the Minor in whole or in part, as judged reasonable and as directed by the Court. The charges therefore may be allowed accordingly in the settlement of the accounts of the Guardian of the Minor.

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B. Any order appointing a Guardian of the Minor who has a Parent living or other Person legally responsible for the support of the Child shall:

1. provide for the payment of Child support by the Parent or other responsible Party pursuant to the Chickasaw Nation Child support guidelines, and
2. contain an income assignment provision.
3. The provisions of this Subsection B shall not apply to Parents whose rights and responsibilities have been terminated to the Child unless the termination order requires payment of Child support.
4. Any Guardianship or Conservatorship for a Minor created on or after the date of passage of this Act shall comply with the provisions of this Subsection B. Guardianships or Conservatorships for a Minor in existence prior to the date of passage of this Act shall comply with the provisions of this Subsection B only as ordered by the Court.

SECTION 6-308.35

APPOINTMENT CONDITIONS.

A. When any Person is appointed Guardian of a Minor, the Court may include in the order of appointment conditions providing for the care, treatment, education and welfare of the Minor.

B. The performance of such conditions shall be a part of the duties of the Guardian, for the faithful performance of which he and the sureties on his bond are responsible.

SECTION 6-308.36

INVESTMENTS IN LIFE INSURANCE.

A Guardian legally holding funds or assets belonging to or for the benefit of a Minor may with the approval of the Court or other court in which such Estate is pending, invest such funds or assets or any part thereof, in single premium life, single premium endowment, or single premium annuity contracts of legal reserve life insurance companies as are duly licensed and qualified to transact business.

SECTION 6-308.37

CONTRACTS.

Such contracts may be issued on the life of a Ward or beneficiary of a trust fund, and shall be so drawn by the insuring company so that the proceeds, or avails thereof shall be the sole Property of the Person whose funds are invested.

SECTION 6-308.38

GUARDIAN; AGENT OF COMPANY; COMMISSIONS.

Such contracts may not be purchased from any company for which the Guardian is acting as agent, or receives any commission, or part of any commission, directly or indirectly paid by such company to its agent soliciting or selling such contract.

SECTION 6-308.39

**WHEN POWER OF GUARDIAN APPOINTED FOR MINOR
CEASES.**

The power of a Guardian appointed for a Minor ceases upon:

1. the removal of the Guardian;
2. the solemnized marriage of the Ward; or
3. the Ward's attaining majority.

SECTION 6-308.40

MINOR WARD AT MAJORITY; RELEASE OF.

After a Minor Ward has come to his majority, such Ward may settle accounts with his Guardian and give him a release, which is valid, subject to approval of the Court, if obtained fairly and without undue influence.

SECTION 6-308.41

DISCHARGE OF GUARDIAN BY COURT.

A Guardian of a Minor appointed by a court is not entitled to his discharge until one (1) year after the majority of the Ward unless the Court determines that the Minor has earlier validly released said Guardian after a final accounting.

SECTION 6-308.42

**ESTATE OF MINORS NOT EXCEEDING \$10,000; ESTATE
OF MINORS EXCEEDING \$10,000; DISPOSITION.**

A. When the whole Estate of a Minor does not exceed the value of ten thousand dollars (\$10,000), the Court may, in its discretion, without the appointment of a Guardian or the giving of bond, authorize and direct:

1. the delivery of the Property or any portion thereof to one or more custodians designated by the Court; or

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2. the payment or delivery of the Property or any portion thereof to the Parent of the Minor, or to the Person having the care or Custody of the Minor, or to the Minor. The Person receiving the Property shall pay necessary expenses of the Minor and hold, manage, and dispose of the Property in the manner directed by the Court.

B. When the whole Estate of a Minor exceeds the value of ten thousand dollars (\$10,000), the Court may, in its discretion, without the appointment of a Guardian or the giving of bond, authorize and direct:

1. the delivery of Property having a value of up to ten thousand dollars (\$10,000) to one or more custodians designated by the Court; or

2. the payment or delivery of up to ten thousand dollars (\$10,000) of the Property or any portion thereof to the Parent of the Minor, or to the Person having the care or Custody of the Minor, or to the Minor. The Person receiving the Property shall pay necessary expenses of the Minor and hold, manage, and dispose of the Property in the manner directed by the Court.

C. The Person making payment, delivery, transfer or issuance of Property or evidence thereof to the individual or custodian designated by the Court pursuant to this Section is discharged and released to the same extent as if payment, delivery, transfer, or issuance was made to a Guardian of the Minor, and the Person is not required to see to the application thereof. A Person making payment, delivery, transfer, or issuance of Property, or evidence thereof, to a next friend or Guardian *Ad Litem* may be discharged and released as provided for by this Act.

SECTION 6-308.43

APPOINTMENT OF GUARDIAN PETITION.

A. Any Person interested in the welfare of a Person believed to be an Incapacitated Person or Partially Incapacitated Person may file a petition alleging that such Person is an Incapacitated or Partially Incapacitated Person, and request the appointment of a Guardian.

B. The petition shall be verified and shall specify:

1. the names and addresses of Persons entitled to notice and to the attorney of the Subject of the Proceeding, if any, and if known to the petitioner;

2. the nature and degree of the alleged incapacity;

3. the relief requested and the facts and reasons supporting the need for such relief including, where applicable, a description of any acts or behavior of the Subject of the Proceeding which gave rise to the allegations; and

4. The estimated value of all Intangible Personal Property of the Ward.

C. A copy of the results of any physical, psychological or other appropriate professional Evaluation of the condition of the Subject of the Proceeding which has been completed within sixty (60) days prior to the filing of the petition, may be attached to the petition at the time it is filed.

D. A Guardianship Plan or plans substantially in the form required by Section 6-308.61 or Section 6-308.63 of this Act or both, as appropriate, may be attached to the petition at the time it is filed or may be submitted to the Court at the time of the hearing.

SECTION 6-308.44

NOMINATION OF GUARDIAN BY PERSON 18 YEARS OF AGE; PRIORITIES OF NOMINATIONS.

A. Every Person eighteen (18) years of age or older who is of sound mind and not acting under duress, menace, fraud or undue influence, may nominate a Guardian of his Person and Property, or of either, as provided by this Section. Such nomination shall, in the event of the incapacity or partial incapacity of said Person be proved in the same manner as any other writing. The nomination shall be binding on any Court having jurisdiction of said Guardianship subject to the disqualification of the nominee by the Court.

B. Such nomination shall be in writing and shall be signed by the Person making such nomination. The nomination shall be substantially in the following form:

“Nomination of Guardian by an Adult

I, _____, being of sound mind and not acting under any duress, menace, fraud, or other undue influence do hereby nominate _____
(Name, current residence, and relationship, if any, of the nominee) to serve as the Guardian of my (Person, Property, both) in the event that after the date of this instrument I become incapacitated.

Executed at _____, _____ (city, state) on this _____ day of _____,
_____.

Signature”

C. In such nomination, the Person making it may nominate an alternate Guardian or

Guardians to act in the event a previously named nominee is unable or unwilling to act as Guardian.

- D. If the same Person has executed more than one nomination of a Guardian:
1. The most recent nomination shall control; or
 2. If two (2) or more nominations bear the same most recent date the Court may appoint one of the nominees or may appoint more than one of the nominees as coguardians upon determining the nominator to be an Incapacitated or Partially Incapacitated Person.

E. This Section shall not be construed as amending or in any manner affecting special powers of attorney, durable powers of attorney or express trusts.

SECTION 6-308.45 **NOMINATION OF GUARDIAN OR LIMITED GUARDIAN BY WILL FOR INCAPACITATED PERSON.**

A Parent of an unmarried Incapacitated or Partially Incapacitated Person, the spouse of a married Incapacitated or Partially Incapacitated Person, or an Adult Child of such Person who is serving as Guardian or Limited Guardian may nominate by will, or by other writing executed by the nominating Parent or Parents, spouse, or Adult Child, an individual to serve as Guardian or Limited Guardian upon the death or incapacity of the nominator. Such nomination shall be executed by the nominator in the same manner as provided for herein.

SECTION 6-308.46 **PRIORITIES FOR SELECTION OF GUARDIAN OR LIMITED GUARDIAN; APPOINTMENT OF ORGANIZATION; INQUIRY AS TO SUITABILITY OF GUARDIAN; APPOINTMENT OF PUBLIC AGENCY.**

A. The following priorities shall guide the selection by the Court of a Guardian or Limited Guardian of an Incapacitated or Partially Incapacitated Person from among those eligible:

1. the individual or individuals nominated by the Subject of the Proceeding;
2. the current Guardian or Limited Guardian appointed or recognized by the appropriate court of any other jurisdiction in which the Incapacitated or Partially Incapacitated Person resides;

3. an individual nominated by the will or by other writing of a deceased Parent, spouse, or an Adult Child who was serving as the Guardian or Limited Guardian of the Subject of the Proceeding;

4. the spouse of the Subject of the Proceeding;

5. an Adult Child of the Subject of the Proceeding;

6. a Parent of the Subject of the Proceeding;

7. a sibling of the Subject of the Proceeding; or

8. any individual approved by the Court with whom the Subject of the Proceeding has been living for more than six (6) months prior to the filing of the petition. Provided that any owner, operator, administrator or employee of a facility shall not be appointed Guardian or Limited Guardian of a resident of such facility unless said owner, operator, administrator or employee is the spouse of said resident, or a relative of said resident within the second degree of consanguinity and is otherwise eligible for appointment.

B. When the Guardian or Limited Guardian of an Incapacitated or Partially Incapacitated Person is the Guardian of Property only, the Court may appoint an Organization which is eligible to manage the financial resources of an individual and has fiduciary powers, or its successor in interest, when:

1. such Organization is nominated by the Subject of the Proceeding; or

2. such Organization is nominated by a Person eligible to make such nomination; or

3. the appointment of such Organization is in the best interest of the Subject of the Proceeding.

C. The Court shall make reasonable inquiry to determine whether the Person or Organization proposed to serve as the Guardian or Limited Guardian of an Incapacitated or Partially Incapacitated Person is suitable and will exercise the powers and carry out the duties and responsibilities of Guardian or Limited Guardian in the best interest of the Ward. The Court shall also inquire of the proposed Guardian of the Person of the Ward as to how the Guardian proposes to provide for the care of the Ward, and of the proposed Guardian of the Estate of the Ward as to how the Guardian proposes to manage the Property of the Ward and to provide for the Ward's financial care. The Court shall make such orders with respect thereto as the Court deems

to be for the best interest of the Ward.

D. A public agency shall not be appointed to serve as Guardian for an Adult except as provided herein or by any other law of the Chickasaw Nation..

SECTION 6-308.47 **NOMINEE UNABLE OR UNWILLING TO SERVE.**

In the event the Person nominated is unable, unwilling, or cannot qualify to so serve, the Court shall make a finding of such fact and shall proceed to the appointment of a Guardian as if such nomination had not been made, taking into account any alternative Guardian named in the nomination.

SECTION 6-308.48 **RIGHTS OF INCAPACITATED OR PARTIALLY
INCAPACITATED PERSON; CONFIDENTIALITY;
RELIEF FROM COSTS AND FEES; RECORD.**

A. In all hearings conducted pursuant to this Act, an individual who is alleged to be or found to be an Incapacitated or Partially Incapacitated Person shall have a right to:

1. notice;
2. be present at such hearings;
3. compel the attendance of witnesses;
4. present evidence;
5. cross-examine witnesses;
6. appeal adverse orders and judgments as provided by the rules of civil procedure;
7. representation by court-appointed counsel upon request; and
8. request that the proceedings be closed to the public.

B. The requirement of notice to the Subject of the Proceeding shall not be waived.

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The requirement that the Subject of the Proceeding be present at a hearing may be waived only for good cause shown. The Court shall make inquiries to determine whether there is sufficient cause to waive the right to be present. Whenever the requirement that the Subject of the Proceeding be present is waived, the Court shall make a finding on the record as to the reason the Subject of the Proceeding is not present at the proceeding and the alternatives which were considered to enable the Subject of the Proceeding to be present.

C. Any Person may apply for permission to participate in a proceeding or to be admitted to a proceeding which has been closed to the public. The Court may grant the request to participate upon determining that the best interest of the Subject of the Proceeding will be served thereby. The Court may, for good cause shown, grant the request of such Person for permission to be admitted to the closed proceeding upon determining that said Person has a legitimate interest in the proceedings. In granting either request, the Court may impose any appropriate conditions it deems necessary.

D. If the Subject of the Proceeding is under the influence of psychotropic medication, during any judicial hearing held pursuant to this Act, the Court shall be advised of this fact, the purpose of the medication, and the effect which it may have on the individual's actions, demeanor and participation at the hearing.

E. Statements of individuals alleged or found to be partially Incapacitated or Incapacitated Persons made during the course of the Evaluations, examinations and treatment pursuant to this Act shall be privileged and confidential. Such statements shall not be admissible without the individual's consent in any civil or criminal proceeding other than a proceeding held pursuant to this Act.

F. A Party to a proceeding held pursuant to this Act may be relieved of court costs and filing fees.

G. At the request of any Party to a proceeding pursuant to the provisions of this Act, the Court shall order that a stenographic or mechanical record of the proceeding be made.

SECTION 6-308.49 **VULNERABLE ADULTS.**

A. As used in this Section:

1. “Vulnerable Adult” means a Person, eighteen (18) years of age or older, who is a victim of Abuse, Neglect or Exploitation, or who is disabled; and

2. “Best interests” means a determination with regard to a Vulnerable Adult that is made from the perspective of the Vulnerable Adult, considering, but without

giving primary importance to, the convenience of the Vulnerable Adult's relatives, caregivers or health care providers, and without regard for the perceived quality of life of the Vulnerable Adult or the Vulnerable Adult's perceived nearness to death.

B. The Court may appoint a Guardian *Ad Litem* upon the request of a Vulnerable Adult, the attorney of a Vulnerable Adult, the Court Advocate, a department of tribal government or the Court on its own motion or any other Party to the action.

C. A Guardian *Ad Litem* shall not be the Vulnerable Adult's attorney, an employee of the Court or an employee of any Chickasaw tribal agency having duties or responsibilities related to the Vulnerable Adult.

D. The Guardian *Ad Litem* shall be appointed to advocate objectively on behalf of the Vulnerable Adult and act as an officer of the Court to investigate all matters concerning the Best Interests of the Vulnerable Adult. In addition to other duties required by the Court and as specified by the Court, a Guardian *Ad Litem* shall have the following responsibilities:

1. review documents, reports, records and other information relevant to the case, meet with and observe the Vulnerable Adult in appropriate settings, and interview relatives, health care providers, adult protective services workers and any other Persons with knowledge relevant to the case;
2. advocate for the Vulnerable Adult's best interests by participating in the case, attending any hearings in the matter and advocating for appropriate services for the Vulnerable Adult when necessary;
3. maintain the confidentiality of information related to the case;
4. monitor the Vulnerable Adult's best interests throughout any judicial proceeding; and
5. present written reports on the Vulnerable Adult's best interests that include conclusions and recommendations, and the facts upon which they are based.

E. The Guardian *Ad Litem* shall be given access to the court files and agency files and access to all documents, reports, records and other information relevant to the case and to any records and reports of examination of the Vulnerable Adult's relatives, Guardian or custodian, made pursuant to the laws relating to Adult Abuse and Neglect, including reports generated by service providers.

F. A court-appointed Guardian *Ad Litem* for Vulnerable Adults may be compensated.

G. Any Person participating in a judicial proceeding as a court-appointed Guardian *Ad Litem* for Vulnerable Adults shall be presumed *prima facie* to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

SECTION 6-308.50

APPOINTMENT OF ATTORNEY AND GUARDIAN *AD LITEM*; EXPLANATION AND INQUIRY BY COURT IF SUBJECT NOT REPRESENTED; RECORD.

A. If at or prior to a hearing on a petition alleging a Person to be an Incapacitated or Partially Incapacitated Person, or if at any point in the course of a proceeding pursuant to said petition, the Subject of the Proceeding is not represented by counsel, the Court may appoint an attorney as provided in this Section, and the Court may at any time subsequent to the filing of said petition appoint a Guardian *Ad Litem* to assist the Court in making a determination as to whether or not an attorney should be appointed for the Subject of the Proceeding. If available, an attorney appointed by the Court may be a public defender.

B. If the Subject of the Proceeding is present at the hearing on the petition and is not represented by counsel at said hearing:

1. the Court shall explain on the record:

a. the purpose and potential consequences of the proceeding; and

b. the right to be represented by counsel upon request and that if the Subject of the Proceeding wishes to be represented by counsel, the Court will appoint an attorney to represent the Subject of the Proceeding at the hearing on the petition.

2. Following such explanation, the Court shall inquire of the Subject of the Proceeding whether he wishes to have an attorney appointed.

a. If the Subject of the Proceeding requests the appointment of an attorney, the Court shall appoint an attorney.

b. If the Subject of the Proceeding does not request the appointment of an attorney and the Court is in doubt as to whether the Subject of the Proceeding is capable of making an informed decision regarding the appointment of an attorney and the Court determines that it is in the best interest of the Subject

of the Proceeding to be represented by counsel, the Court shall appoint an attorney for the subject of the proceeding, or if the Court determines that the appointment of counsel is not in the best interest of the Subject of the Proceeding, the Court shall not appoint an attorney.

c. If the Subject of the Proceeding does not request the appointment of an attorney and the Court determines that the Subject of the Proceeding is capable of making an informed decision regarding the appointment of an attorney, the Court shall not appoint an attorney.

3. The Court may make the explanation and inquiry required by this subsection, regarding the purpose and potential consequences of the proceeding and the appointment of an attorney, prior to the hearing on the petition. At the hearing on the petition the Court shall include on the record the facts related to said explanation and inquiry, the determinations made by the Court with respect thereto and the reasons for such determinations.

C. If the Subject of the Proceeding is not present at the hearing on a petition alleging him to be an Incapacitated or Partially Incapacitated Person and is not represented by counsel and the Court has not made the explanation and inquiry as provided by Paragraph B.3 above, the Court shall make sufficient inquiry to determine affirmatively whether it would be in the best interest of the Subject of the Proceeding to appoint counsel to represent the Subject of the Proceeding at the hearing on the petition.

1. If the Court determines that it is in the best interest of the Subject of the Proceeding to be represented by counsel, the Court shall appoint an attorney.

2. If the Court determines that the appointment of counsel is not in the best interest of the Subject of the Proceeding, the Court shall not appoint an attorney.

D. Whenever the Court determines that the appointment of counsel is not in the best interests of the Subject of the Proceeding, or if the Subject of the Proceeding does not request the appointment of an attorney and the Court determines that the Subject of the Proceeding is capable of making an informed decision regarding the appointment of counsel, the Court shall explain on the record the reason for such determination.

E. Court-appointed Attorneys:

1. If an attorney is appointed, the Court shall delay the hearing on the petition only for the period of time necessary for the attorney to prepare the case for the hearing but in no event less than five (5) days after such appointment.

2. The attorney appointed by the Court shall be replaced by another attorney if:

- a. the Subject of the Proceeding prefers the services of an attorney other than the one initially appointed for him;
- b. the preferred attorney agrees to accept the responsibility; and
- c. the Subject of the Proceeding or the attorney whom he prefers notifies the Court of the preference and the attorney's acceptance of employment.

3. An attorney appointed pursuant to this Section shall contact the Subject of the Proceeding promptly after receiving notification of his appointment. An attorney appointed pursuant to the provisions of this Section shall be compensated pursuant to this Act.

F. Terms of Appointment:

1. Except as provided by Paragraph 2 below or as otherwise ordered by the Court, the responsibility of an attorney appointed hereunder ceases upon the appointment of a Guardian or Limited Guardian of the Subject of the Proceeding or when a determination not to appeal the decision is made. The Court may appoint an attorney to represent a Ward at any subsequent proceeding.

2. Whenever there is an appeal of a decision made subsequent to a hearing on a petition requesting the appointment of a Guardian or Limited Guardian, the responsibility of an attorney appointed pursuant to this Subsection continues with respect to the appeal until the conclusion of the appeal proceedings. Upon application of the attorney, the Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the Subject of the Proceeding in any appeal proceedings.

G. In all cases where independent counsel is retained by or on behalf of the Subject of the Proceeding, the Court shall make independent inquiry to determine whether counsel is independent and whether any conflict of interest exists which would preclude proper representation of the Subject of the Proceeding or which would be detrimental to the best interest of the Subject of the Proceeding. The Court shall appoint other counsel where retained counsel is found not to be independent.

H. Proceedings brought pursuant to the provisions of this Section shall be made a part of the record in the Guardianship Proceeding.

SECTION 6-308.51

**EVALUATIONS OF SUBJECT OF PROCEEDING IN
CONNECTION WITH PROCEEDING.**

A. After the filing of the petition, the Court may, on its own motion or at the request of any Party to the proceeding, if the Court determines it to be for the best interest of the Ward, order an Evaluation of the Subject of the Proceeding in connection with any proceeding pursuant to the provisions of this Act where the capacity of said Person is a material issue.

B. Any Evaluations made pursuant to this Act, as appropriate for the condition or alleged condition of the Person being evaluated, shall be performed by:

1. a physician;
2. a psychologist;
3. a social worker with a graduate degree in social work and field training or experience in working with Incapacitated or Partially Incapacitated Persons; or
4. other expert with knowledge of the particular incapacity or disability which the individual is alleged or has been found to have, or knowledge of the skills required to meet the essential requirements for the individual's physical health or safety or to manage that individual's financial resources.

C. An Evaluation report prepared and signed by the Person or Persons performing the Evaluation shall be submitted to the Court prior to the hearing at which the Court shall consider the report. The report shall include, but not be limited to:

1. a description of the nature and extent of the incapacity of the Person, if any;
2. a description of the mental, emotional and physical condition of the Person, his ability to function in the ordinary activities of daily life and, if appropriate, the educational condition, adaptive behavior and social skills of the Person;
3. an opinion regarding the kind and extent of assistance, if any, required by the Person;
4. an assessment and review of any services necessary to provide for the well-being of the Person in the following areas:
 - a. physical health;

- b. mental health;
 - c. social skills; and
 - d. adequate and appropriate living conditions;
- 5. an opinion regarding:
 - a. the probability that the extent of the incapacity, if any, of the Person may significantly lessen or increase; and
 - b. the type of services or treatment, if any, appropriate for the Subject of the Proceeding or which could facilitate improvement in the condition of the Subject of the Proceeding; and
- 6. a description of any tests or other evaluative techniques used.

SECTION 6-308.52

PETITIONS FOR GUARDIANS OF INCAPACITATED OR PARTIALLY INCAPACITATED PERSONS; NOTICE.

When it is represented to the Court in a petition filed pursuant to this Act alleging that a Person is an Incapacitated Person or Partially Incapacitated Person, the Court shall set a date for a hearing on the petition which date shall be no more than thirty (30) days after the filing of the petition. The Court shall cause notice to be served and to the attorney of the Subject of the Proceeding, if any, and if known to the petitioner.

SECTION 6-308.53

NOTICE OF HEARING ON PETITION REQUESTING APPOINTMENT OF GUARDIAN FOR INCAPACITATED OR PARTIALLY INCAPACITATED PERSON.

A. The Court shall cause notice to be served of the time and place of the hearing on the petition requesting the appointment of a Guardian for an Incapacitated or Partially Incapacitated Person on:

- 1. the Subject of the Proceeding; and
- 2. the following Persons, other than the petitioner, who are known to the petitioner or whose existence and address can be ascertained by the petitioner with reasonably diligent efforts:
 - a. the spouse, if any, of the Subject of the Proceeding;

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- b. the attorney, if any, of the Subject of the Proceeding;
- c. all Adult Children of the Subject of the Proceeding;
- d. if there is no such Adult Child, the then living Parent or Parents of the Subject of the Proceeding; or
- e. if there is no such Parent, all Adult Brothers and Sisters of the Subject of the Proceeding and all Adult grandchildren of the Subject of the Proceeding;

3. in case no Person listed in Paragraph 2 above is given notice, notice shall be given to at least one (1) and not more than three (3) of the nearest Adult relatives of the Subject of the Proceeding who are known to the petitioner or whose existence and address can be ascertained with reasonably diligent efforts;

4. if not the petitioner, any Person or Organization which, in the petition, is proposed to serve as Guardian or Limited Guardian or, to the extent such nomination is known to the petitioner, who is nominated by will or other writing to serve as Guardian or Limited Guardian;

5. to the extent known to the petitioner:

a. the Person or facility having care or Custody of the Subject of the Proceeding; and

b. any department of tribal government which is providing services to the Subject of the Proceeding;

6. as appropriate, the Veterans Administration or any other federal agency;
and

7. any other Person as directed by the Court.

B. A copy of the pleading which gave rise to the notice shall be attached to any notice served pursuant to this Section.

C. Except for actions appointing a Special Guardian pursuant to this Act:

1. Notice shall be served personally on the individual who is the Subject of

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the Proceeding at least ten (10) days before the time set for hearing. Such Personal service may be made by the attorney for the petitioner, Bureau of Indian Affairs police, or approved process server. The Person making such services shall make proper return thereof.

2. Notice to other Persons entitled to notice of a hearing on the original petition requesting the appointment of a Guardian shall be mailed by regular first-class mail at least ten (10) days before the time set for the hearing. Such service by mail may be made by the Court Clerk, deputy Court Clerk or attorney for the petitioner.

D. The notice to the Subject of the Proceeding shall set forth the date, time, place, and purpose of the hearing to which the notice refers. Such notice shall be substantially in the following form:

“NOTICE OF HEARING TO: _____

Service Address _____. You are hereby notified that a petition has been filed alleging that you are an ___ Incapacitated, ___ Partially Incapacitated Person and are incapable of ___ caring for yourself, ___ managing your Property. The petition requests that a ___ Guardian, ___ Limited Guardian be appointed by the Court to make decisions for you regarding ___ yourself, ___ your Property. A copy of the petition is attached. The hearing on the petition will be held on _____, _____, at _____ (PM) (AM). At the hearing, a () Guardian, () Limited Guardian may be appointed for your () Person, () Property. The Judge will explain to you the nature, purpose and effect of the proceedings. You have the right to attend the hearing. You may confront and cross-examine all witnesses and present your own witnesses. You have the right to request that your hearing be closed to the public. You may request that an expert be appointed to examine you and if the Judge believes that an examination is necessary, the Judge will order an Evaluation to be done. You have the right to hire an attorney of your choice to represent you. If you do not have an attorney and you wish to be represented by an attorney at the hearing, the Court will appoint one for you. You may request the appointment of an attorney orally or in writing prior to the hearing or at the hearing. If you are able, you will be required to pay the cost of an attorney appointed by the Court.”

SECTION 6-308.54

GUARDIAN APPOINTED; WHEN.

A. At the hearing on the petition the Court shall determine whether or not it is necessary to appoint a Guardian of the Person, Property or both. If a Guardian is needed, the Court shall determine:

1. when a General or Limited Guardian of the Person of the Subject of the Proceeding is requested, the essential requirements for the health and safety of the Subject

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of the Proceeding and the skills and knowledge necessary to meet those requirements;

2. when a General or Limited Guardian of the Property of the Subject of the Proceeding is requested, the type and amount of the financial resources of the Subject of the Proceeding, the essential requirements for managing the financial resources, and the skills and knowledge necessary to manage the financial resources;

3. the nature and extent of the incapacity of the Subject of the Proceeding, if any; and

4. whether by clear and convincing evidence the Subject of the Proceeding is an Incapacitated or Partially Incapacitated Person.

B. If after a full hearing and examination upon such petition, the Court finds by clear and convincing evidence that the Subject of the Proceeding is an Incapacitated or Partially Incapacitated Person:

1. if the Court finds the Subject of the Proceeding to be an Incapacitated Person, the Court shall appoint:

a. a General Guardian of the Person; and

b. as the Court determines to be necessary and appropriate, a Guardian of the Property of the Ward;

2. if the Court finds the Subject of the Proceeding to be a Partially Incapacitated Person the Court shall appoint, as necessary and appropriate for said Person:

a. a Limited Guardian of the Person; or

b. a General or a Limited Guardian of the Property of said Person; or

c. a Limited Guardian of the Person and a General or Limited Guardian of the Property of said Person.

C. The Court may appoint the same or separate Persons to serve as Guardian or Limited Guardian of the Person and Guardian or Limited Guardian of the Property of a Ward.

SECTION 6-308.55

CONTENTS OF ORDER APPOINTING GUARDIAN; SPECIFIC DETERMINATIONS REGARDING CAPACITY;

GUARDIANSHIP PLAN.

A. The order appointing a Guardian, based upon evidence adduced, shall set forth:

1. the determinations made by the Court at the hearing;
2. the name and address of the individual, if any, appointed to serve as the Limited Guardian or Guardian;
3. the specific limitations imposed upon the Ward, if the Ward is a Partially Incapacitated Person;
4. any authority granted a Guardian of the Person of the Ward to change the place of abode of the Ward outside of the territorial jurisdiction of the Chickasaw Nation without the prior permission of the Court; and
5. Whenever the Court determines a review hearing is necessary or desirable, the date of the review hearing.

B. In establishing the specific limitations on the legal activities of a Ward for whom a Limited Guardian of the Person is appointed, the Court shall make specific determinations regarding the capacity of the Subject of the Proceeding, including but not limited to determining whether the Ward retains sufficient capacity:

1. to vote;
2. to serve as a juror;
3. to operate a motor vehicle;
4. to be licensed or continue to practice any profession of the Ward; and
5. to make Personal medical decisions including but not limited to decisions to withhold or withdraw life-sustaining procedures, to donate organs, to undergo elective surgery, or to consent to routine or necessary medical or other professional care, treatment or advice.

C. In establishing the specific limitations on the legal abilities of a Ward for whom a Limited Guardian of the Property is appointed, the Court shall make specific determinations regarding the capacity of the Subject of the Proceeding, including but not limited to determining whether the Ward retains sufficient capacity to:

1. appoint an agent to act on his behalf;
2. enter into contracts;
3. grant conveyances; or
4. make gifts of Property.

D. If not submitted with the petition or at the hearing, the Guardian or Limited Guardian shall submit a Guardianship Plan as required by this Act, or both, as appropriate and a copy of said plan shall be mailed to those Persons entitled to notice pursuant to this Act. The Guardianship Plan as approved by the Court shall be made a part of the order of the Court. Said plan may be modified as provided by this Act.

E. The Court may, in its discretion, make such further orders as the Court deems necessary for the best interest of the Ward for care of the Ward and maintenance or management of the Ward's Property, including but not limited to:

1. order the Guardian of the Property of the Ward to provide the Ward from such Property with specified amounts of money, monthly, or from time to time, which the Ward may dispose of as the Ward shall determine and for which, other than a showing of the amounts paid to the Ward, the Guardian will not be required to account. Such order may be modified upon application of the Guardian or any interested Person, and a hearing conducted thereon, with notice of the hearing on such application to be given to those Persons entitled to notice pursuant to this Act; and
2. the amount of the bond as required by this Act.

SECTION 6-308.56

**ASSIGNMENT OF POWERS AND DUTIES TO LIMITED
GUARDIAN; CREATION OF LIMITED GUARDIANSHIP;
LIMITATION OR SPECIFICATION OF ASSETS.**

A. The Court may assign to a Limited Guardian of the Person any portion of the powers and duties of a General Guardian of the Person except the power to take Custody of the person of the Ward. The Court may also assign to the Limited Guardian the duty to assist the Ward in those particular areas in which the capacity of the Ward is impaired including, but not limited to, the duty to assist the Ward in:

1. meeting the requirements for his health or safety;
2. protecting his rights;

3. obtaining necessary services;
4. fulfilling his civic duties; and
5. any other areas as determined necessary by the Court and which are not specifically prohibited by this Act.

B. An order specifying that only part of the Property or Estate of a Ward is under the control or management of the Guardian creates a Limited Guardianship of the Property.

1. The Court may assign to a Limited Guardian of Property any of the duties and powers of a General Guardian of the Property regarding the management of financial resources which the Partially Incapacitated Person lacks the capacity to perform; or

2. the Court may assign to a Limited Guardian of Property the duty of assisting the Ward to perform any of such functions with regard to any financial resource of the Ward.

C. If the Court limits any power conferred on the Guardian of Property or specifies that management of some but not all assets of the Ward be placed under the control of a Guardian of the Property, the limitation or specification of assets subject to the Guardianship must be endorsed upon the Letters of Guardianship.

SECTION 6-308.57

APPOINTMENT OF SPECIAL GUARDIAN IN CERTAIN INSTANCES; NOTICE; POWERS; DURATION; BOND; REMOVAL.

A. The Court may appoint a Special Guardian for a Person who appears to be or has been found to be an Incapacitated or Partially Incapacitated Person when it appears:

1. there is imminent danger that the health or safety of said Person will be seriously impaired or that the financial resources of said Person will be seriously damaged or dissipated unless immediate action is taken; and

2. no other Person appears to have authority to act in the circumstances or the Guardian previously appointed is unable to or refuses to take action.

B. The request for appointment of a Special Guardian may be included in the petition to appoint a Guardian or by separate petition, either of which must be verified.

C. The Court may appoint an attorney, separate and apart from the petitioner's

attorney, for the Subject of the Proceeding who does not have legal representation and either cannot afford a private attorney or cannot retain counsel due to incapacity and may proceed to hear the petition as same pertains to appointment of a Special Guardian with or without notice. If notice is required, the notice shall set a time for hearing on the petition within seventy-two (72) hours. Notice shall be Personally served in the manner as the Court directs on the Subject of the Proceeding and on the following other Persons:

1. the Subject of the Proceeding;
2. the attorney of the Subject of the Proceeding, if any;
3. the spouse of the Subject of the Proceeding, if any, and if the spouse is not the petitioner; and
4. at least one other Adult relative of the Subject of the Proceeding or any other Person who is not the petitioner, as directed by the Court.

D. The Court may without notice appoint a Special Guardian upon the filing of the petition, upon presentation of evidence of the incapacity of the Subject of the Proceeding, upon a showing that an immediate or reasonably foreseeable serious physical harm to the Subject of the Proceeding or serious impairment of the financial resources of said Person will result from a delay, and upon presentation of a proposed emergency plan of care for the Subject of the Proceeding. Whenever a Special Guardian is immediately appointed as provided by this subsection, the Court shall cause a copy of the petition, to be served on the following Persons in the manner the Court directs:

1. the Subject of the Proceeding;
2. the spouse of the Subject of the Proceeding, if any, if the spouse is not the petitioner; and
3. at least one other Adult relative of the Subject of the Proceeding, if such relative is known or can be ascertained with reasonable diligence, or by any other Person who is not the petitioner, as directed by the Court.

E. The Court shall grant the Special Guardian only those powers necessary to act with respect to the particular emergency, as determined by the Court. The Special Guardian shall be granted only powers to accomplish acts that are both supported by the proposed emergency plan of care and found necessary by the Court. Power to change the place of residence of the Subject of the Proceeding shall be specifically granted by the Court upon a showing that the needs of the Subject of the Proceeding cannot be met within such subject's present residential

arrangements. The Court's approval shall be required for any changes in either the emergency plan of care or the specified powers of the Special Guardian. The Letters for a Special Guardian shall state that the Person is a Special Guardian, the date of the expiration of the Special Guardianship, and the specific power or powers of the Special Guardian.

F. The appointment of a Special Guardian shall be effective from the date of appointment until a Guardian is appointed pursuant to this Act, or for thirty (30) days, whichever is less.

G. The Court shall not require bond if the appointment is over the Person only, and may require or waive bond if the appointment is as to the Property of the Ward.

H. The authority of any Guardian or Limited Guardian previously appointed by the Court is suspended with regard to the powers granted to the Special Guardian, but not otherwise, for as long as a Special Guardian has authority as provided by this Section.

I. The Court may remove a Special Guardian at any time. The Special Guardian shall file a report showing all actions taken during the Special Guardianship and shall make any other report the Court requires.

SECTION 6-308.58

PROCEEDINGS TO DETERMINE RESTORATION TO CAPACITY.

A. Any Person who has been judicially determined to be an Incapacitated or Partially Incapacitated Person, the Guardian or Limited Guardian, any relative of the Ward or any friend of the Ward may apply by petition to the Court to have the fact of the Ward's restoration to capacity judicially determined. The petition shall be verified, and shall state that such Person is no longer Incapacitated or partially Incapacitated.

B. Upon receiving the petition, the Court shall appoint a day for the hearing. Such hearing shall be set within thirty (30) days after the date of the filing of the petition. The Court shall cause notice to be served and to the attorney of the Subject of the Proceeding, if any, and if known to the petitioner. At the hearing, the Guardian or relative of the petitioner, and in the discretion of the Court, any other Person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify, as in all other civil matters, and may be called and examined by the judge on his own motion. If it is found that the petitioner is no longer Incapacitated or partially Incapacitated and capable of taking care of himself or his Property, or both, his restoration to capacity shall be adjudged, and the Guardianship of such Person shall cease.

SECTION 6-308.59

**GUARDIAN OF INCOMPETENT; DISCHARGE;
PRESUMED COMPETENT.**

Whenever a Guardian or Limited Guardian who has been appointed for an Incapacitated or Partially Incapacitated Person has been discharged by the final order of a court having jurisdiction thereof, and no other Guardian has been appointed for said Person by a court of competent jurisdiction, the Person for whom said Guardian had been appointed shall be presumed to be fully restored and shall be presumed to be fully capable and competent to make contracts and transact any and all business as though said Person had never been declared to be Incapacitated or partially Incapacitated.

SECTION 6-308.60

**DUTIES AND POWERS OF GUARDIAN OR LIMITED
GUARDIAN; DILIGENT AND GOOD FAITH
PERFORMANCE OF DUTIES AND POWERS;
TERMINATION OF GUARDIANSHIP.**

A. A Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person is responsible for the care or control of the Ward pursuant to the provisions of this Act, and the orders of the Court, and the Guardianship Plan approved by the Court and shall perform diligently and in good faith any specific duties and powers assigned by the Court.

B. Minimum Requirements:

1. A Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person shall:

- a. become or remain sufficiently acquainted with the Ward and maintain sufficient contact with the Ward to know of the capacities, limitations, needs, opportunities, and physical and mental health of the Ward;
- b. assure that the Ward has a place of abode in the least restrictive, most normal setting consistent with the requirements for his health or safety; and
- c. provide any required consents or approvals on behalf of the Ward as authorized by the Court.

2. A Guardian or Limited Guardian of the Person, if consistent with the terms of an order of the Court, may:

- a. if no Guardian of the Property or Conservator for the Estate of the Ward has been appointed, institute proceedings, including administrative

proceedings, or take other appropriate action to compel the performance by any Person of a duty to support the Ward or to pay sums for the welfare of the Ward; and

b. consent to routine or necessary medical or other professional care, treatment, or advice for the Ward without liability by reason of the consent for injury to the Ward resulting from the negligence or acts of third Persons unless a Parent would have been liable in the circumstances.

C. If satisfied that the incapacity or partial incapacity of the Ward has ceased, the Guardian or Limited Guardian shall file a petition requesting a determination on the restoration to capacity of the Ward and the termination of the Guardianship.

SECTION 6-308.61

PROPOSED GUARDIANSHIP PLAN FOR CARE AND TREATMENT OF WARD.

A. If not filed with the petition or submitted to the Court at the time of the hearing, within ten (10) days after his appointment the Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person shall file with the Court, for its approval, a proposed plan for the care and treatment of the Ward and shall submit subsequent or modified plans as required by this Act. Upon the application of the Guardian or Limited Guardian, the Court may extend the time for filing the plan for not more than thirty (30) days. The Court may approve a plan acceptable to the Court without notice or hearing or may, as necessary, order the modification of the plan at the initial review hearing.

B. Proposed Guardianship Plans:

1. The proposed Guardianship Plan and any subsequent Guardianship Plans for the care and treatment of the Ward shall state:

a. the services which are necessary to meet the essential requirements for the physical health or safety of the Ward taking into account the contents and recommendations of an Evaluation report made with respect to the Ward, if any;

b. the means for obtaining those services;

c. the manner in which the Guardian or Limited Guardian, the Ward, and the Guardian of the Property of the Ward or the Conservator, or if an Organization or another Person has been appointed to serve in that capacity, will exercise and share decision-making authority; and

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d. such other services necessary to assist in fulfilling the needs of the Ward, the terms of the most recent dispositional order applying to such Guardian or Limited Guardian, and the duties of such Guardian or Limited Guardian.

2. Each such plan shall be substantially in the following form:

“Plan for the Care and Treatment of a Ward

I, _____, the (Guardian, Limited Guardian) for

_____ (Name and address of the Ward)

hereby submit this (initial, annual or as ordered by the Court) Guardianship Plan for the care and treatment of said Ward.

1. I believe the services necessary for the physical health and safety of the Ward are: _____.

2. Those services will be obtained or provided as follows: _____.

3. The Guardian (or Conservator) of the Property (Name or indicate as not applicable) of the Ward, the Ward, and I plan to cooperate and share decision-making authority with regard to the Ward within the provisions of the dispositional order as follows: _____.

4. I believe the following services will assist in fulfilling the needs of the Ward, implementing the terms of the most recent dispositional order applying to me as (Guardian or Limited Guardian):

_____.

Date: _____, _____

(Signature of Guardian or Limited Guardian)”

C. If ordered by the Court, the plan for the care and treatment of the Ward shall be prepared with the assistance of any Person designated by the Court to provide such assistance.

SECTION 6-308.62

**DUTY TO KEEP PROPERTY OF WARD SAFE;
FIDUCIARY DUTIES.**

A. A Guardian of the Property must keep safe the Property of his Ward and shall act as a fiduciary as provided by this Act. Subject to the order and the Guardianship Plan for the management of the financial resources of the Ward, a Guardian or Limited Guardian of the Property of the Ward:

1. shall expend or distribute, authorize the expenditure or distribution of, and assist in the expenditure or distribution of, the principal of or income from the financial resources placed under his supervision and control to assure that:

a. the essential requirements for the physical health or safety of the Ward are met;

b. the Property rights of the Ward are protected;

c. the financial resources of the Ward which are subject to the Guardianship are prudently managed; and

d. the Guardian or Limited Guardian of the Person of the Ward, if any, or if other than the Guardian or Limited Guardian of the Property, is able to perform the duties and powers assigned by the Court;

2. may expend funds of the Estate for the support of Persons legally dependent on the Ward and others who are members of the Ward's household who are unable to support themselves, and who are in need of support; and

3. may, subject to prior specific approval by the Court, make gifts to charity, Persons, which may include the Guardian or Limited Guardian, or both such charity and Persons, as the Ward might have been expected to make, based upon an established pattern of giving made by the Ward prior to the appointment of a Guardian or Limited Guardian or if the Court finds it is in the best interest of the Subject of the Proceeding on the basis of tax or Estate planning. The Court may approve gifts of small amounts for holidays, birthdays or similar occasions and shall specify in the order the maximum amount which may be expended for such purpose and the Person or Persons to whom such gifts can be made, which may include Guardians or Limited Guardians.

B. Limited Guardians of Property shall consider the size of the financial resources of the Ward which have not been placed under their supervision or control.

C. If satisfied that the incapacity or partial incapacity of the Ward has ceased, the Guardian or Limited Guardian of the Property shall file a petition requesting a determination on the restoration to capacity of the Ward and the termination of the Guardianship.

SECTION 6-308.63

**PLANS FOR MANAGEMENT OF FINANCIAL
RESOURCES OF WARD; FORM.**

A. If not filed with the petition or submitted to the Court at the time of the hearing, within two (2) months after his appointment, a Guardian or Limited Guardian of the Property of an Incapacitated or Partially Incapacitated Person shall file with the Court for its approval a proposed plan for the management of the financial resources of the Ward that are under his management or administration, and an inventory as required pursuant to this Act. Said Guardian or Limited Guardian shall submit subsequent or modified plans as required by this Act.

B. Initial and subsequent Guardianship Plans for the management of the financial resources of the Ward shall state:

1. the services which are necessary to manage the Property of the Ward placed under the control of the Guardian or Limited Guardian;
2. the means for obtaining those services;
3. the manner in which the Guardian or Limited Guardian of the Property of the Ward, the Ward, and the Guardian or Limited Guardian of the Person, or if another individual has been appointed to serve in that capacity, will exercise and share decision-making authority;
4. such other services necessary to assist in the management of the Property placed under the Guardian or Limited Guardian in fulfilling the needs of the Ward and the duties of such Guardian or Limited Guardian, and the terms of the most recent dispositional order.

C. Each such plan shall be substantially in the following form:

“Plan for the Management of the Property of the Ward

I, _____, the (petitioner, Guardian or Limited Guardian) for

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_____ (Name and address) hereby submit this (initial, annual or as ordered by the Court) Guardianship Plan.

1. I believe the services necessary to manage the Property of the Ward which is subject to this Plan are as follows: _____

_____.

2. Those services will be provided in the following manner: _____

_____.

3. The Guardian (or Limited Guardian) of the Person, (Name, or indicate as not applicable) the Ward, and I plan to cooperate and share decision-making authority with regard to the Ward within the provisions of the dispositional order as follows: _____

_____.

4. I believe the following services will assist in the management of the Property of the Ward subject to my control, implementing the terms of the most recent dispositional order applying to me as (Guardian or Limited Guardian) of the Property: _____

_____.

_____.

Date: _____, _____

(Signature of Guardian or Limited Guardian)''

SECTION 6-308.64

**HOMESTEAD OF INCAPACITATED OR PARTIALLY
INCAPACITATED PERSON; SALE OR LEASE BY
GUARDIAN AUTHORIZED.**

Guardians of Incapacitated and Partially Incapacitated Persons are authorized and empowered subject to the dispositional order and the Guardianship Plan to sell and convey all or part of the homestead of the Incapacitated or Partially Incapacitated Person, and to lease all or part of the homestead of the Incapacitated or Partially Incapacitated Person for oil, gas, and other mineral exploration, development and production purposes and for agricultural purposes.

SECTION 6-308.65

SALE OR LEASE PROCEDURE; JOINDER BY SPOUSE.

When the Ward owns an interest in a tract of real Property in addition to a homestead interest, no conveyance, deed, contract or lease executed pursuant to the authority granted by this Act shall be valid, unless the sale or leasing be conducted in the manner provided by law for the sale or leasing of other lands of an Incapacitated or Partially Incapacitated Person, be approved by the court in which the Guardianship Proceeding is pending, and the spouse of the Ward be a Party to such conveyance, deed, contract or lease and join in the execution and acknowledgment thereof, but when the Ward owns no interest in a tract of real Property other than a homestead interest or possible homestead interest, a Guardian may execute a conveyance thereof on behalf of the Ward for the purpose of waiving such homestead interest or possible homestead interest, if so authorized by order of the court in which such proceeding is pending, made pursuant to application and notice sent by ordinary mail to the Persons set forth in this Act at least ten (10) days prior to the hearing of such application.

SECTION 6-308.66

APPLICABLE ONLY TO HOMESTEAD; CUMULATIVE.

Sections 6-308.66 and 6-308.67 of this Act apply only to the homestead and are cumulative and in addition to any such procedures now provided or permissible under existing statutes.

SECTION 6-308.67

**ESTATES OF INCAPACITATED OR PARTIALLY
INCAPACITATED PERSONS NOT EXCEEDING
\$10,000.00; DISPOSITION.**

A. When the whole Estate of an Adult who has been adjudicated to be Incapacitated or Partially Incapacitated does not exceed the value of ten thousand dollars (\$10,000), the Court may, in its discretion, without the appointment of a Guardian or the giving of bond, authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable Person designated by the Court, or, if the assets do not consist of money, authorize the delivery thereof to a suitable Person designated by the Court. The Person receiving such Property shall hold and dispose of the same in such manner as the Court directs.

B. The Person making payment, delivery, transfer or issuance of Property or evidence thereof to the Person designated by the Court under this Section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a Guardian of the Incapacitated or Partially Incapacitated Person, and he is not required to see to the application thereof. A Person making payment, delivery, transfer or issuance of Property, or evidence thereof, to a next friend or Guardian *Ad Litem* may be discharged and released as provided for in this Act.

SECTION 6-308.68

**ESTABLISHMENT OF CONSERVATORSHIP BY REASON
OF PHYSICAL DISABILITY; CONSENT; NOTICE;
HEARING.**

When it is represented to the Court upon verified petition of any Person, any relative, or friend that:

1. a Person is an inhabitant or resident of the territorial jurisdiction of the Chickasaw Nation or is not a resident of such jurisdiction of the Chickasaw Nation but has Property within such jurisdiction;
2. that such Person is, by reason of physical disability only, unable to manage his Property; and
3. that such Person voluntarily consents to the establishment of a Conservatorship and the appointment of a Conservator, the Court must cause notice to be served Personally on the Person so alleged to be unable to manage his Property and on such other Persons and in such manner as the Court directs, of the time and place of hearing such petition, not less than five (5) days before the time so appointed, and such Person, if able to attend, must be produced before the Court at the hearing.

SECTION 6-308.69

**APPOINTMENT OF CONSERVATOR AFTER FULL
HEARING AND EXAMINATION - CONSENT.**

If, after a full hearing and examination upon such petition, it appears to the Court that the Person in question is, by reason of physical disability, unable to manage his Property and that such Person consents to the appointment of a Conservator, the Court shall appoint a Conservator of the Estate of such Person. A Conservator shall not be appointed if the Person in question does not consent to the appointment.

SECTION 6-308.70

INELIGIBILITY.

No Person shall be appointed Conservator of an Estate who would be ineligible to act as Guardian of the Ward in such case.

SECTION 6-308.71

**CONSERVATOR'S POWERS AND DUTIES;
JURISDICTION.**

A Conservator shall have the same powers and duties, including the submission of plans and reports, as a Guardian or Limited Guardian of the Property of an Incapacitated or Partially Incapacitated Person as required by this Act. All laws relative to the jurisdiction of the Court

over the Estate of a Person under Guardianship as an Incapacitated or Partially Incapacitated Person, including the investment, management, sale or mortgage of his Property and the payment of his debts, shall be applicable to the Estate of a Person under Conservatorship.

SECTION 6-308.72 **DISCHARGE AND ACCOUNTING.**

A Conservator may be discharged by the Court upon the application of the Ward or otherwise upon such notice to the Conservator and next of kin of said Ward as the Court may determine reasonable and proper, when it appears that the Conservatorship is no longer necessary. In the event of the death, resignation or removal of a Conservator, the Court, on the application of the former Ward and upon such notice to the next of kin of said Ward as the Court may order, may certify that said Ward is discharged by operation of law if it appears that the Conservatorship of said Ward is no longer necessary. Upon the termination of a Conservatorship, a Conservator shall account to the Court as otherwise provided by this Act for Guardians of Property.

SECTION 6-308.73 **COMPENSATION.**

The Conservator shall receive as compensation for his services the compensation provided by law for Guardians.

SECTION 6-308.74 **SUBSEQUENT APPOINTMENT OF GUARDIAN OF SAID WARD.**

Any subsequent appointment of a Guardian of said Ward as an Incapacitated or Partially Incapacitated Person shall be an appointment as Guardian of the Person only of said Ward and shall not include the appointment of such Guardian of the Estate of said Ward or in any manner affect the Custody, management and the handling of the Estate of said Ward by the Conservator so long as such Conservatorship proceedings are pending.

SECTION 6-308.75 **LIMITATION ON POWER TO CONTRACT.**

Upon the appointment of a Conservator, the Ward shall not thereafter have the power to enter into any contract creating an obligation against his Estate except for necessities.

SECTION 6-308.76 **EFFECT ON PRIOR CONSERVATORSHIPS.**

All Conservatorships created prior to the effective date of this Act, with the consent of the Person for whose Property a Conservator was appointed, are hereby validated. Each such Conservatorship shall be presumed to have been created by consent unless otherwise established by documents filed in the Conservatorship action or by other evidence.

SECTION 6-308.77

**APPOINTMENT OF GUARDIAN OF MORE THAN FIVE
WARDS PROHIBITED; EXCEPTIONS.**

No Person shall be appointed Guardian of any Minor or Incapacitated or Partially Incapacitated Person, who is, at the time of the hearing of the application for appointment, the Guardian of as many as five Persons, other than his own family or relatives. The provisions of this Section and Section 6-308.78 of this Act shall not apply to boards of control and superintendents of eleemosynary or charitable institutions, under the control and charge of the state, where under the law such boards of control and superintendents may be appointed as Guardians of the Estates, or of the Persons, of those Committed to their charge or safekeeping. The provisions of this Section shall not prohibit the appointment of officers or managers of fraternal or benevolent orders or homes and church orphanages as to inmates of such institutions.

SECTION 6-308.78

VIOLATIONS; PUNISHMENT.

Any Person or official violating the provisions of Section 6-308.77 of this Act shall be guilty of a misdemeanor.

SECTION 6-308.79

**DISQUALIFICATION BY FINANCIAL RELATIONS WITH
JUDGE; REMOVAL OF INELIGIBLE GUARDIANS;
LIABILITY FOR CONTINUING TO ACT; REMOVAL OF
JUDGE.**

No natural Person shall be eligible to act as Guardian of an Estate under the jurisdiction of any Judge of the District Court, if said Judge of the District Court is under any financial obligation whatsoever to such Person. If any Judge of the District Court, while holding the office of Judge of the District Court, becomes pecuniarily liable to any Guardian of any Minor or Incapacitated or Partially Incapacitated Person, such liability shall operate to disqualify such Guardian. It is hereby made the duty of the Judge of the District Court to enter on the court docket such disqualifying conditions. The disqualification shall also apply if such Person, except a Parent who is Guardian of his or her own Child or Children has rendered financial aid to said judge, in securing his nomination and election to the office of Judge of the District Court, or his appointment as Judge of the District Court. Persons who have heretofore been appointed Guardians, who are not eligible to act under this Section shall be by the Judge of the District Court removed and successors appointed, as provided by law. If any Person not eligible to act under this Section continues to act as Guardian, after such ineligibility has been legally determined, such Person and the surety upon his bond shall be liable to the Estate of the Minor or Incapacitated or Partially Incapacitated Person for all money unlawfully paid by such ineligible Guardian out of the Estate of such Minor or Incapacitated or Partially Incapacitated Person, and if a Judge of the District Court knowingly permits an ineligible Person to act, he shall be removed from office.

SECTION 6-308.80

ELIGIBILITY OF NON-RESIDENTS; FOREIGN TRUST COMPANIES; DOMESTIC CORPORATIONS OR TRUST COMPANIES.

No Person who has not been a resident, in good faith, of the Chickasaw Nation for one (1) year past shall be appointed Guardian of the Property or Person of a Minor or an Incapacitated or Partially Incapacitated Person by the Court, and no foreign trust company or institution shall be appointed Guardian of the Property or Person of any Minor or an Incapacitated or Partially Incapacitated Person by the Court. Provided that this shall not prevent one from being appointed Guardian of his own spouse, Child, Children, grandchild, grandchildren, Parent, Grandparent, Brother, Sister, Aunt, Uncle, Niece or Nephew even though he be a nonresident. No domestic corporation or trust company shall be appointed or qualify as Guardian of a Minor or Incapacitated or Partially Incapacitated Person unless such company is at the time a resident of and maintains its usual place of business within the Chickasaw Nation. A domestic corporation or a natural Person not a resident of the Chickasaw Nation may be appointed as such Guardian upon the written request in a will or otherwise of a Person eligible to make such nomination pursuant to the provisions of this Act.

SECTION 6-308.81

INQUIRY TO DETERMINE WHETHER PERSON IS SUITABLE TO SERVE AS GUARDIAN.

A. In conducting an inquiry to determine whether a Person is suitable to serve as a Guardian, the Court shall determine if:

1. the Person proposed to serve as Guardian is a Minor or an Incapacitated or Partially Incapacitated Person;
2. the Person proposed to serve as Guardian is a convicted felon;
3. the Person proposed to serve as Guardian is insolvent or has declared bankruptcy during five (5) years prior to the filing of the pleading proposing such Person to serve as Guardian;
4. the Person proposed to serve as Guardian or is under any financial obligation to the Ward; or
5. there exists a conflict of interest which would preclude or be substantially detrimental to the ability of the Person to act in the best interest of the Subject of the Proceeding if such Person is appointed.

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B. No Minor, Partially Incapacitated Person or Incapacitated Person shall be appointed Guardian of a minor, Incapacitated or Partially Incapacitated Person.

C. If the Person proposed to serve is a convicted felon, the Court shall make further inquiry into the nature of the felony and the circumstances surrounding the conviction. The Court shall appoint such Person proposed to serve only upon determining that the facts underlying the conviction do not give rise to a reasonable belief that Person proposed to serve will be unfaithful to or neglectful of his fiduciary responsibilities, and that the appointment is in the best interest of the Ward.

D. If the Person proposed to serve as Guardian or Limited Guardian of the Property of an Incapacitated or Partially Incapacitated Person is insolvent or has declared bankruptcy within five (5) years prior to the filing of the pleading proposing that such Person serve, the Court shall appoint such Person only after giving due consideration to the nature and extent of the Property of the Ward and the anticipated actions necessary to Manage the Estate of the Ward, and only upon a determination that such appointment is in the best interest of the Ward. Insolvency or bankruptcy shall not automatically preclude a Person proposed to serve as Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person.

E. If the Person proposed to serve as Guardian or Limited Guardian of the Property of an Incapacitated or Partially Incapacitated Person is under any financial obligation to the Ward, the Court shall make further inquiry into the nature and extent of such obligation. The Court shall appoint the Person proposed to serve only after a determination that such obligation will not impair the ability of the Person proposed to serve to discharge his fiduciary responsibilities, and that the appointment is in the best interest of the Ward. Being under financial obligation to the Ward shall not automatically preclude a Person proposed to serve as Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person.

F. A current or potential conflict of interest which is not substantial and not likely to preclude or impair the ability of a Person proposed to serve as a Guardian acting in the best interest of his Ward shall not, by itself, disqualify such Person from appointment.

SECTION 6-308.82

GUARDIAN'S BOND; LETTERS TO ISSUE ON FILING.

A. Before the entry of an order appointing a Person or Organization as a Guardian of the Person and before the Letters issue, the Court may require the Person or Organization to be appointed to provide a bond to the Chickasaw Nation, with sufficient sureties, to be approved by the Court, and in such penal sum as the Court shall order, conditioned that the Guardian will faithfully execute the duties of the trust according to law.

B. Bond Requirements:

1. Before the entry of an order appointing a Person or Organization as the Guardian of a Minor or as the Guardian or Limited Guardian of the Property of an Incapacitated or Partially Incapacitated Person takes effect, and before the Letters issue, the Court shall require the Person or Organization to be appointed to provide a bond, in an amount not less than the value of Intangible Personal Property as alleged in the petition or otherwise determined by the Court at the hearing on the petition, to the Chickasaw Nation, with sufficient sureties, to be approved by the Court, and in such penal sum as the Court shall order, conditioned that the Guardian will faithfully execute the duties of the trust according to law.

2. For purposes of this Paragraph 2, Personal Property shall not include Property owned with a joint tenant. the Court may order that a bond is not necessary upon a finding by the Court that:

a. the anticipated annual income to a Ward for one (1) year plus the value of the Personal Property of the Ward is less than forty thousand dollars (\$40,000); and

b. the Guardian of the Ward is either a Parent, spouse, Brother, Sister, Grandparent, Child, or grandchild of the Ward.

C. In the event the Intangible Personal Property of the Ward, as determined by the inventory, is in a greater amount than as alleged in the petition or determined by the Court at the hearing on the petition, the Guardian shall file at the time the inventory is filed a bond sufficient for the full amount of the Intangible Personal Property, which bond will be in substitution for the bond originally filed on the appointment of the Guardian. The amount of the bond in the future may be adjusted up or down in amount based upon the Intangible Personal Property shown in future annual accountings, provided however, no bond shall be reduced except upon order of the Court.

SECTION 6-308.83

**PETITION REQUESTING FOR FURTHER SECURITY;
SUSPENSION OF POWERS; ORDER.**

When a petition is presented praying that a Guardian be required to give further security, or to give bond where, by order of the Court no bond was originally required, and it is alleged on oath that such is necessary to serve the best interest of the Ward or his Estate, the Judge may, by order, suspend his powers until the matter can be heard and determined. If the Judge determines a bond or other security is in the best interests of the Ward or his Estate, the Judge shall order the

same to be posted, and if it is not given within a reasonable time, to be fixed by the Judge, the Guardian shall be removed.

SECTION 6-308.84 **COURT MAY REQUIRE NEW BOND; DISCHARGING SURETIES.**

The Court may require a new bond to be given by a Guardian whenever the Court deems it necessary, and may discharge the existing sureties from further liability, after due notice is given as the Court may direct, when it shall appear that no injury can result therefrom to those interested in the Estate.

SECTION 6-308.85 **BONDS TO BE PRESERVED; BREACH OF CONDITION; ACTIONS ON BONDS.**

Every bond given by a Guardian must be filed and preserved in the office of the Court Clerk, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the Ward or of any Person interested in the Person or Estate of the Ward.

SECTION 6-308.86 **STATUTE OF LIMITATION OF ACTION; EFFECT OF DISABILITY.**

No action can be maintained against the sureties on any bond given by a Guardian, unless it be commenced within three (3) years from the discharge or removal of the Guardian; but if at the time of such discharge a Person entitled to bring such action is under any legal disability to sue, the action may be commenced by such Person at any time within three (3) years after such disability is removed.

SECTION 6-308.87 **INVENTORY AND ACCOUNT OF WARD'S ESTATE.**

A. Every Guardian or Limited Guardian of the Property of a Ward shall file an inventory of the Estate of his Ward within two (2) months after his appointment. The time to file an inventory may be extended by the Court for good cause shown. The Court may, upon application made for that purpose by any interested Person, compel the Guardian or Limited Guardian of the Property of a Ward to render a revised inventory or account to the Court of the Estate of his Ward. Each inventory and account returned or rendered must be sworn to by the Guardian or Limited Guardian.

B. The Guardian shall state his opinion of the value of the Estate of the Ward described in the first inventory. Such inventory shall be filed with the district Court Clerk. Whenever any other Property of the Estate of any Ward is discovered, not included in the inventory of the Estate already returned, and whenever any other Property has been succeeded to

or acquired by any Ward, or for his benefit, like proceedings must be had for the return thereof. If requested by the Ward, Judge or any interested Person, such Property must be appraised by appraisers appointed, sworn and acting in the manner provided for regulating the settlement of the Estate of decedents.

C. The Court shall not waive any inventory of Property of the Ward which is required by this Section.

SECTION 6-308.88

**ACCOUNT SETTLEMENT AND ALLOWANCE;
REPORTS; CONSOLIDATION OF REPORTS;
ACCOUNTING INFORMATION.**

A. Except as otherwise provided by Subsection B below, a Guardian or Limited Guardian of the Property shall, upon the expiration of a year from the time of appointment, and at least annually thereafter, present accounts to the Court for settlement and allowance as part of the Guardianship Report as required by Section 6-308.91 of this Act.

B. Annual Accountings:

1. In addition, a Guardian or Limited Guardian of the Property shall:

a. present accounts whenever the Court requires that such report or accounts be presented; and

b. with the annual report of accounts, report any changes of Property listed on the inventory required by Section 6-308.87 of this Act. The report shall state the compensation requested by the Guardian and for the attorneys.

2. If there has been a significant change in the physical or mental condition of the Ward, or the Ward's financial resources, the details thereof shall be set forth in the annual report required by Subsection A above.

3. Except as otherwise directed by the Court or required by the Uniform Veteran's Guardianship Act (72 U.S.C. 126.1, et seq.), the provisions of this Subsection B regarding the filing of an annual accounting and annual plan shall not apply to any Guardianship of the Property of a Ward if the Ward's financial resources or assets, other than a homestead, are worth less than forty thousand dollars (\$40,000) if a bond has been posted, or are worth less than ten thousand dollars (\$10,000) regardless of whether or not a bond has been posted, and if the Guardian or Limited Guardian of the Property is the spouse or a relative of the Ward within the fourth degree of consanguinity.

C. In addition to the reports required by Subsections A and B above, a Guardian or Limited Guardian shall submit a report:

1. if the Ward is an Incapacitated or Partially Incapacitated Person, when there is a significant change in the capacity of the Ward to meet the essential requirements for the physical health or safety of the Ward or to manage the financial resources of the Ward;
2. if the Ward is a Minor, any significant change in the condition of the Minor or in the condition of the Estate of the Minor;
3. when the Guardian or Limited Guardian resigns or is removed; and
4. when the Guardianship is terminated.

D. Reports:

1. Unless waived at the discretion of the Court, a Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person shall file a report on the Guardianship of the Person pursuant to Section 6-308.90 of this Act.
2. Unless waived at the discretion of the Court, a Guardian of the Person of a Minor Ward shall file such reports of the Guardianship of the Person of the Ward as required by the Court in such form as the Court may require.
3. A Guardian or Limited Guardian of the Property of a Ward shall file a report on the Guardianship of the Property pursuant to Section 6-308.91 of this Act.

E. The Court shall not waive the filing of any report for a period in excess of five (5) years.

F. If the same Person or Organization is required to file reports as to both the Person and the Property of a Ward, the reports may be consolidated.

G. An accounting information submitted by a Guardian or Limited Guardian of the Property of a Ward shall be verified and shall be rendered in a manner determined by the Court with respect to an information of an Estate of a decedent. Such information shall also set forth any charges to the Property of the Ward which have accrued since the previous accounting or, in the case of an initial accounting, since the filing of an inventory of the Property of the Ward placed under the control of the Guardian or Limited Guardian.

H. In addition to other specified information any order of the Court approving an annual Guardianship Plan and report shall include the date certain by which the Guardian shall file the next annual report.

SECTION 6-308.89

ACCOUNT RENDERED BY TWO OR MORE JOINT GUARDIANS.

When an account is rendered by two (2) or more joint Guardians, the Court may allow the same upon oath of any of them.

SECTION 6-308.90

REPORT ON GUARDIANSHIP OF INCAPACITATED OR PARTIALLY INCAPACITATED PERSON.

A. A report on the Guardianship of the Person of an Incapacitated or Partially Incapacitated Person shall set forth:

1. the name and place of abode of the Ward and the name and address of the Guardian or Limited Guardian;
2. any significant change in the capacity of the Ward to meet the essential requirements for his physical health or safety;
3. the services being provided to the Ward and the relationship of those services to the individual Guardianship Plan;
4. any significant actions taken by the Guardian or Limited Guardian or Guardian during the reporting period;
5. any significant problems relating to the Guardianship which have arisen during the reporting period;
6. the reasons, if any, why the appointment should be continued; and
7. the reasons, if any, why no less restrictive alternative will permit the Incapacitated or Partially Incapacitated Person to meet the essential requirements for his physical health or safety.

B. The report shall be substantially in the following form:

“Report on the Guardianship of a Person

I, (Name) the (Guardian/Limited Guardian of the Person) for (Name) , an (Incapacitated/Partially Incapacitated) Person hereby submit this (annual, court-ordered) Guardianship Report.

1. The present place of abode of the Ward is: _____

_____.

2. The type of home or facility in which the Ward lives is _____
and the name of the Person in charge of the home or facility is _____.

3. My present street address and telephone number is: _____

_____.

4. During the last year, I have seen the Ward _____ times. I otherwise or also have become or remained familiar with the needs and care of the Ward as follows: _____

The nature of my visits to the Ward have been: _____
_____.

5. The following services are currently being provided to the Ward: _____
_____.

6. These services (are, are not) provided for in the current Guardianship Plan. The reason they are not shown in the current Guardianship Plan is: _____
_____.

7. The Ward was last seen by a physician on: _____, _____. The purpose of the visit was: _____
_____.

8. I (have, have not) observed any major change in the Ward's physical or mental condition during the last year. (If so,) these are my observations: _____

_____.

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9. I (have, have not) taken any significant action for or on behalf of the Ward since the last time I submitted a Guardianship Report. (If so,) I took the following actions: _____

10. There (have, have not) been any significant problems relating to the Ward or to my Guardianship of the Ward since the last time I submitted a Guardianship Report or, if this is an initial report, since the issuance of my Letters. (If so,) I have observed these problems: _____

11. It is my opinion that the Guardianship (should, should not) be continued. (If so,) the basis for my belief is as follows: _____

12. I believe the Ward (would, would not) be able to manage essential requirements for physical health and safety with fewer restrictions on the Ward's ability to act for himself or herself. (If so,) the basis for my belief is as follows: _____

13. My opinion of the present care being provided to the Ward is as follows: _____

14. The place of abode of the Ward (has, has not) changed since the last Guardianship Report. (If so,) the place of abode of the Ward was changed for the following reasons: _____

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

Date: _____, _____

(Signature of Guardian or Limited Guardian)

Telephone: _____”

C. Whenever there are changes or proposed changes to the Guardianship Plan, an Individual Guardianship Plan, substantially in the same form as provided in Section 6-308.61 of this Act, shall be submitted with the Guardianship Report and shall show any such changes or proposed changes in the Guardianship Plan since last submitted to and approved by the Court.

D. Attached to the report shall be:

1. an accounting of any monies received by the Guardian or Limited Guardian on behalf of the Ward;
2. any expenditures made by the Limited Guardian or Guardian on behalf of the Ward;
3. any compensation requested by the Guardian or Limited Guardian; and
4. Copies of any appropriate medical records, Evaluations, or other similar documentation pertinent to the reporting period.

SECTION 6-308.91

**CONTENTS OF REPORT ON GUARDIANSHIP OR
LIMITED GUARDIANSHIP OF PROPERTY OF WARD.**

A. A report on the Guardianship or Limited Guardianship of the Property of a Ward shall set forth:

1. the name and place of abode of the Ward, and the name and address of the Guardian or Limited Guardian;
2. if the Ward is an Incapacitated or Partially Incapacitated Person, significant changes in the capacity of the Ward to manage his financial resources and the services being provided to the Ward and the relationship of those services to the individual Guardianship Plan for the management of financial resources;
3. any significant actions taken by the Guardian or Limited Guardian during the reporting period;
4. any significant problems relating to the Guardianship which have arisen during the reporting period; and
5. if the Ward is an Incapacitated or Partially Incapacitated Person, the reasons, if any, why the Guardianship should not be terminated, or why no less restrictive alternative would permit the Ward to manage his financial resources.

B. If the Ward is an Incapacitated or Partially Incapacitated Person, reports on the Guardianship of the Property shall be substantially in the following form:

“Report on the Guardianship of Property

I, (Name) the (Guardian or Limited Guardian of the Property) of (Name) , an Incapacitated (or a Partially Incapacitated) Person, hereby submit this (annual, court-ordered) Report.

1. List any significant changes in the capacity of the Ward to manage his or her financial resources: _____
_____.
2. The services currently being provided to the Ward are as follows: _____
_____.
3. These services (are, are not) provided for in the current Guardianship Plan as approved by the Court. The reason these services are not shown in the current plan are as follows: _____
_____.
4. I (have, have not) taken any significant actions for or on behalf of the Ward since the last time I submitted a Guardianship Report. (If so:) These actions are as follows: _____
_____.
5. There (have, have not) been any significant problems relating to the Guardianship since the last time I submitted a Guardianship Report. (If so:) The problems are as follows: _____
_____.
6. In my opinion, the Guardianship (should, should not) be continued. The reasons for my belief are as follows: _____
_____.
7. It is my belief that the Ward (would, would not) be able to manage his or her financial resources with fewer restrictions on the Ward's ability to act for him or herself. The reasons for my belief are as follows: _____
_____.

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

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Date: _____, _____

(Signature of Guardian or Limited Guardian)”

C. If the Ward is a Minor, reports on the Guardianship of the Property shall be substantially in the following form:

“Report on the Guardianship of a Minor

I, (Name) the (Guardian or Limited Guardian of the Property) of (Name) , a Minor, hereby submit this (annual, court-ordered) Report.

1. The services currently being provided to the Ward are as follows: _____
_____.

2. These services (are, are not) provided for in the current Guardianship Plan as approved by the Court. The reason these services are not shown in the current plan are as follows: _____

_____.

3. I (have, have not) taken any significant actions for or on behalf of the Ward since the last time I submitted a Guardianship Report. (If so:) These actions are as follows: _____

_____.

4. There (have, have not) been any significant problems relating to the Guardianship since the last time I submitted a Guardianship Report. (If so:) The problems are as follows: _____
_____.

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

Date: _____, _____

(Signature of Guardian or Limited Guardian)”

D. Whenever there are changes or proposed changes to the Guardianship Plan, an individual Guardianship Plan for the management of financial resources, substantially in the same form as provided in Section 6-308.63 of this Act, shall be submitted with the Guardianship Report and shall show any such changes or proposed changes in the Guardianship Plan since last submitted and approved by the Court.

E. The Report:

1. shall contain a complete financial statement of the financial resources of the Ward under the control or supervision of the Guardian or Limited Guardian of the Property;
2. shall contain an accounting of any receipts and disbursements received, or expenditures made by the Guardian or Limited Guardian on behalf of the Ward;
3. may include any request for compensation for the Guardian; and
4. may include any compensation request for the attorney for the Ward.

F. As directed by the Court, following submission of a report or in conjunction with an initial or annual review or any subsequent proceeding, a Guardian or Limited Guardian shall submit to an actual review of the financial resources placed under his control.

SECTION 6-308.92

**MAILING OF COPIES OF ANNUAL REPORT UPON
FILING; HEARING; REPORT WITHOUT NOTICE;
COMPENSATION; NEW BOND; APPOINTMENT OF
COUNSEL TO REPRESENT WARD.**

A Annual reports; Copies:

1. Upon the filing of an annual report the Court shall immediately cause a copy of the report to be mailed by first-class mail to:
 - a. the Persons entitled to notice pursuant to Section 6-308.26 of this Act for Minors; or
 - b. those Persons entitled to notice pursuant to Paragraphs 1, 2, 3 and 7 of Subsection A of Section 6-308.53 of this Act for Adults; and
 - c. the attorney of the Ward, if any.

2. Attached to the copy of the report shall be a statement notifying the Person receiving copies of said reports that any objection to the report must be filed within fifteen (15) days after the date of the filing of the annual report with the Court.

3. Any Person entitled to receive a copy of the annual report may file an objection to said report within fifteen (15) days after the filing of the annual report with the Court.

B. Hearing on an Annual report; Notice:

1. After notice, the Court may on its own motion hold a hearing on an annual report and shall hold a hearing:

a. upon the filing of an objection to the annual report; or

b. when the Court is considering issuing an order other than an order accepting the report and granting the relief requested.

2. Notice for a hearing on an annual report shall be given, by mail, to the Persons entitled to notice pursuant to Section 6-308.26 of this Act for Minors or Paragraphs 1, 2, 3 and 7 of Subsection A of Section 6-308.53 of this Act for Adults at least ten (10) days prior to the date set for the hearing. Notice shall be in such form as the Court may direct and shall be sent by regular first-class mail.

C. The Court may enter an order granting the relief requested in the report without notice if the Court determines that such relief should be granted immediately. In that event, the Court shall grant such relief on a temporary basis pending a hearing on the report or the expiration of the fifteen (15) days within which an objection to the report may be filed.

D. When no objection to an annual report is filed and no hearing on the annual report is held as otherwise provided by this Section, the Court shall issue an order accepting the annual report and granting the relief requested.

E. The compensation for the Guardian, the Guardian's attorney, and any other Person entitled to compensation from the Property of the Ward shall be determined by the Court in the manner required by the provisions of this Act. Such order, whether issued at the expiration of the fifteen (15) days within which an objection to the annual report may be filed or after a hearing on the report, shall be final with respect to all Persons given copies of the annual report or notice of such hearing, except with regard to any such Person who may be determined to have been subject to a legal disability at the time such notice was given. Such order also shall be final with respect

to the Guardian except with respect to challenge by the Ward upon the removal of the Ward's legal disability.

F. With regard to an annual report of a Guardian of the Property of a Ward, the Court shall examine the changes, if any, to the Property of the Ward as set forth in the report. If the Guardian was required to submit a bond, and if the total value of the Ward's Property which is subject to the proceeding differs significantly from the total value of the Ward's Property as last disclosed to the Court:

1. the Court shall direct such Guardian to obtain a new bond of such lesser or greater penal amount as will adequately protect the Ward's Property which is subject to the proceeding;
2. such new bond shall be filed with the district Court Clerk within thirty (30) days following the date of the order; and
3. if the Court requires a new bond of a greater penal amount than the bond previously submitted, failure of the Guardian to submit such new bond within the thirty-day period set forth in this Subsection F shall constitute grounds for removal of such Guardian or Limited Guardian.

G. At any hearing held upon an annual report:

1. if required by the Court, the Guardian or Limited Guardian shall be present;
2. the Court shall review the annual report and consider any objection made thereto, and thereupon enter such order as the Court deems appropriate; and
3. the Court may make any order which the Court deems to be in the best interest of the Ward or the Estate of the Ward. The Court may also set for further hearing, with prior notice to be given as provided in this Section, any other matter which the Court deems should be considered in the best interest of the Ward or the Estate of the Ward. Subject to appeal or vacation within the time permitted, an order entered after the hearing of an annual report after notice adjudicates as to liabilities concerning the matters considered in connection with said hearing.

H. At a hearing upon an annual report the Court may appoint an attorney to represent the Ward who is an Incapacitated or Partially Incapacitated Person, in the same manner and with the same compensation as provided in this Act for appointment of an attorney for the Subject of the Proceeding following the filing of a petition for appointment of a Guardian or Limited

Guardian of the Person or Property of an alleged Incapacitated or Partially Incapacitated Person. The appointment of such attorney shall cease:

1. upon the entry by the Court of an order pertaining to the matters considered at such hearing, unless the Court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;
2. unless an appeal is taken from the order of the Court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the Ward until final disposition of the appeal or as otherwise ordered by the Court; or
3. upon application of said attorney, the Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the Subject of the Proceeding in any appeal proceeding.

SECTION 6-308.93

**APPLICATIONS TO COURT FOR RELIEF; CONTENTS
FOR APPLICATION; NOTICE AND HEARING; ORDER;
APPOINTMENT OF COUNSEL; JOINDER; EVALUATION
OF WARD; HEARING WITHOUT NOTICE.**

A. After the appointment of a Guardian, the Ward, any Person interested in the welfare of the Ward, or a Guardian may make application to the Court for:

1. termination of the Guardianship;
2. removal of the Guardian;
3. resolution of a dispute pertaining to the Guardianship Plan;
4. if the Ward is an Incapacitated or Partially Incapacitated Person, the imposition of additional restrictions upon the legal capacity of the Ward to act on his own behalf or the removal of one or more existing restrictions; or
5. a review hearing.

B. Such application shall set forth:

1. the names and addresses of the individuals and entities entitled to notice;

2. the relief requested; and
3. the alleged facts and reasons supporting the request.

C. Any Person entitled to notice of the hearing on an application filed pursuant to this Section may object to the relief requested in the application. If the Ward is a Minor, notice shall be as provided by Section 6-308.26 of this Act. If the Ward is an Incapacitated or Partially Incapacitated Person, notice shall be given to those Persons entitled to notice pursuant to Paragraphs 1, 2, 3 and 7 of Subsection A of Section 6-308.53 of this Act and shall be given as provided by Section 6-308.53 of this Act and to the attorney of the Subject of the Proceeding, if any, and if known to the petitioner.

D. The Court shall set an application filed pursuant to this Section for hearing on a date certain and shall cause notice to be given to the Persons entitled thereto by regular first-class mail at least ten (10) days prior to such date. However, except for an order terminating a Guardianship, the Court may enter an order granting the relief requested in the application without notice if the Court determines that such relief should be granted immediately. In that event, the Court may grant such relief on a temporary basis and proceed to set the application for further hearing following the giving of notice as provided by this subsection. At the hearing, based upon the evidence adduced, the judge may continue, modify or vacate his temporary order.

E. At the hearing held upon an application filed pursuant to this Section for which notice is required, the Court may, based upon the evidence adduced, enter an order granting or denying the relief requested. At such hearing, the Court also may make any other order which the Court deems to be in the best interests of the Ward or the Estate of the Ward. The Court may also set for further hearing, with prior notice to be given as provided in this Section, any other matter which the Court deems should be considered in the best interest of the Ward or the Estate of the Ward.

F. With respect to any matter set for hearing pursuant to this Section, the Court may appoint an attorney to represent at such hearing a Ward who is an Incapacitated or Partially Incapacitated Person, in the same manner and with the same compensation as provided in this Act for appointment of an attorney for the Subject of the Proceeding following the filing of a petition for appointment of a Guardian or Limited Guardian of the Person or Property of an alleged Incapacitated or Partially Incapacitated Person. The appointment of such attorney shall cease:

1. upon the entry by the Court of an order pertaining to the matters considered at such hearing, unless the Court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;

2. unless an appeal is taken from the order of the Court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the Ward until final disposition or as otherwise ordered by the Court; or

3. upon application of said attorney, the Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the Subject of the Proceeding in any appeal proceeding.

G. After notice, the Court may join the issues raised in separate applications or separate objections for determination at a single hearing, unless the Court determines joinder would be prejudicial to the interests of the Ward.

H. As necessary and appropriate the Court may order an Evaluation of the Ward in connection with any Guardianship Proceeding subsequent to the appointment of a Guardian.

I. The Court may hear an application other than with respect to the matters set forth in subsection A of this Section, with or without notice as the Court determines. If the Court requires notice to be given, the Court shall specify the Persons to whom notice shall be given and the manner and time in which such notice shall be given.

SECTION 6-308.94 **COMPENSATION OF GUARDIANS.**

A. Every Guardian must be allowed the amount of his reasonable expenses in the execution of his trust, and he must also have such compensation for his services as the Court in which his accounts are settled deems just and reasonable.

B. To the extent that the services of a Guardian or Limited Guardian of the Property are for the collection of income of the Ward, compensation for such services shall not exceed seven and one-half percent (7 ½ %) of the income so collected. For the purposes of this Section, "income" means funds received by and accounted for by the Guardian or Limited Guardian on behalf of the Ward, other than from the sale of Property of the Ward, plus the net proceeds from the sale of Property of the Ward in excess of the value of such Property as last determined in the Guardianship Proceeding.

C. All compensation and reimbursements pursuant to this Section shall be approved by the Court prior to payment.

SECTION 6-308.95 **JOINT GUARDIANS' COMPENSATION.**

Joint Guardians shall not receive more compensation than a single Guardian.

SECTION 6-308.96

ATTORNEY FEES.

A. Payment of Compensation:

1. An attorney, other than a Public Defender or Court Advocate, for a Ward or a subject of a proceeding pursuant to this Act or whose services are obtained by a Guardian on behalf of a Ward is entitled to reasonable compensation to be paid from and as a charge against the Estate of the Ward. Reasonable compensation for attorney services rendered and expenses made on behalf of the Guardian of the Ward incurred prior to the appointment of the Guardian may be paid from and charged against the Estate of the Ward, as approved by the Court prior to payment.

2. Guardians *Ad Litem*, other than an employee of a public agency or an employee of a private agency which provides such service pursuant to a contract with a public agency, appointed pursuant to the provisions of this Act are entitled to reasonable compensation.

3. A Person conducting an Evaluation of the Subject of the Proceeding, whose services resulted in the appointment of a Limited Guardian or Guardian or other order beneficial to the Subject of the Proceeding, is entitled to reasonable and necessary compensation.

B. Compensation; How Made:

1. Compensation and reimbursements pursuant to this Section shall be paid from the financial resources of the Subject of the Proceeding unless the Court determines that such payment of compensation and reimbursements would:

a. substantially impede the partially Incapacitated or Incapacitated Person from meeting the essential requirements for his physical health or safety; and

b. substantially impair the financial resources of such Person, or substantially impede his ability to obtain the services necessary for developing or regaining his abilities to the maximum extent possible.

2. If not otherwise compensated or reimbursed pursuant to the provisions of Paragraph 1 above:

a. any attorney or Guardian *Ad Litem* appointed by the Court who is entitled to compensation shall be compensated from the court fund;

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b. the cost of services provided by a Person conducting an Evaluation, when such Person is the employee of a public agency or the employee of a private agency which provides such services for Guardianship Proceedings pursuant to an agreement with a public agency, shall be borne by the public agency, or by the private agency in accordance with the terms of such agreement; and

c. if the Person conducting an Evaluation is a private individual or agency and the cost of the services provided is not otherwise compensable under a state or federal public assistance program, compensation for the cost of services shall be from the court fund.

3. Compensation or reimbursement from the court fund for attorneys and Guardian *Ad Litem* may be made at the discretion of the Court.

C. All compensation and reimbursements pursuant to the provisions of this Section shall be approved by the Court prior to payment.

SECTION 6-308.97

COSTS; GUARDIAN TO APPROVE MINOR ENTERING ARMED SERVICES.

A. No costs shall be required by the Court Clerk in any Guardianship Proceeding where the proceeding is for the purpose of appointing a Guardian to approve or authorize the Ward to enter the armed forces of the United States.

B. If the Court waives the report, the Court may waive the fee for the filing of the annual Guardianship Report, if any is required, for a Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person or for a Guardian of the Person of a Minor.

SECTION 6-308.98

APPOINTING MORE THAN ONE GUARDIAN; BOND.

The Court may appoint more than one Guardian of any Person or Property subject to Guardianship. Such Guardians shall be governed and liable in all respects as a sole Guardian. Such Guardian shall give bond in like manner and with like conditions as prescribed for sole Guardians unless waived.

SECTION 6-308.99

TWO OR MORE GUARDIANS.

A. If there are two (2) Guardians who are residents of the Chickasaw Nation, the act of one (1) alone shall be effectual:

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1. if a coguardian is laboring under any legal disability from serving, said coguardian in such case shall be relieved from official liability; provided however, proper finding and valid order of the Court is first obtained; or

2. if a coguardian has given the other coguardian authority in writing to act for both.

B. If there are more than two (2) Guardians, the act of a majority of them is valid.

SECTION 6-308.100 DEATH OF ONE OF TWO OR MORE JOINT GUARDIANS.

On the death of one (1) of two (2) or more joint Guardians, the power continues to the survivor until a further appointment is made by the Court.

SECTION 6-308.101 NONRESIDENT WARD'S GUARDIAN; NOTICE.

When a Person liable to be put under Guardianship, according to the provisions of this Act, resides without the Chickasaw Nation, and has Estate therein, any friend of such Person, or any one interested in his Estate, in expectancy or otherwise, may apply to the Court for the appointment of a Guardian; and if, after notice given to all interested, in such manner as the judge orders, and a full hearing and examination, it appears proper, a Guardian for such absent Person may be appointed.

SECTION 6-308.102 POWERS OF NONRESIDENT GUARDIAN.

Every Guardian appointed under the preceding section has the same powers and performs the same duties, with respect to the Estate of the Ward found within the Chickasaw Nation, and with respect to the Person of the Ward, if he shall cease to reside therein, as are prescribed with respect to any other Guardian appointed under this Act.

SECTION 6-308.103 JURISDICTION OF FIRST APPOINTMENT.

The Guardianship which is first lawfully granted, of any Person residing without the Chickasaw Nation, extends to all the Estate of the Ward within the Chickasaw Nation, and excludes all other jurisdictions.

SECTION 6-308.104 BOND OF GUARDIAN OF NONRESIDENT.

Every such Guardian must give bond to the Chickasaw Nation, in the manner and with like conditions as hereinbefore provided for other Guardians, except that the provisions respecting the inventory, the disposal of the Estate and effects, and the account to be rendered by

the Guardian must be confined to such Estate and effects as come to his hands in this jurisdiction.

SECTION 6-308.105 **REMOVAL OR IMPAIRING RIGHT OF WARD TO PROPERTY.**

When the Guardian and Ward are both nonresidents, and the Ward is entitled to Property within the jurisdiction of the Chickasaw Nation which may be removed to a state, territory, foreign country or another Indian nation without conflict with any restriction or limitation thereupon, or impairing the right of the Ward thereto, such Property may be removed to the state, territory, foreign country or other Indian nation of the residence of the Ward, upon the application of the Guardian to the Court.

SECTION 6-308.106 **REMOVAL APPLICATION; CONTENTS; REQUIREMENTS.**

A. The application must be made upon ten (10) days' notice to the resident Personal representative or Guardian, if there be such, and upon such application the nonresident Guardian must produce and file a certificate, under the hand of the clerk, judge, surrogate or other authorized officer, and the seal of the court from which his appointment was derived, showing:

1. A transcript of the record of his appointment.
2. That he has entered upon the discharge of his duties.
3. That he is entitled by the laws of the state, territory, country or Indian nation of his appointment to the possession of the Estate of the Ward; or must produce and file a certificate under the hand and seal of the clerk, judge, surrogate or other authorized officer of the court having jurisdiction in the country of his residence, of the Estates of Persons under Guardianship, or of the highest court in such state, territory, country or Indian nation, that by the laws of such jurisdiction the applicant is entitled to the Custody of the Estate of his Ward without the appointment of any court.

B. Upon such application, unless good cause to the contrary be shown, the Court must make an order granting to such Guardian leave to take and remove the Property of his Ward to the state, territory or place of his residence, which is authority to him to sue for and receive the same in his own name, for the use and benefit of his Ward.

SECTION 6-308.107

**ORDER FOR DISCHARGE OF PERSONAL
REPRESENTATIVE OR LOCAL GUARDIAN.**

Such order is a discharge of the Personal representative, local Guardian, or other Person in whose possession the Property may be at the time the order is made, on filing with the Court the receipt therefor of the foreign Guardian of such absent Ward.

SECTION 6-308.108

PAYMENT OF JUST DEBTS.

Every Guardian appointed under the provisions of this Act shall pay all just debts due from the Ward out of the Personal Estate and income from the real Estate of the Ward, if sufficient. If said Estate and income is not sufficient, then payment shall be made out of the real Estate of the Ward, upon obtaining an order for the sale thereof, the proceeds of such sale shall be disposed of in the manner provided by law for the sale of real Estate of decedents.

SECTION 6-308.109

**COLLECTION AND SETTLEMENT OF ACCOUNTS;
APPEARANCE FOR WARD.**

A Guardian must settle all accounts of the Ward, and demand, sue for, and receive all debts due to the Ward, or may, with the approval of the Court, compromise or compound for the same and give discharges to the debtors on receiving a fair and just settlement of such claim. A Guardian shall appear for and represent the Ward in all legal suits and proceedings, unless another Person is appointed for that purpose as Guardian or next friend. A Guardian, with the approval of the court exercising jurisdiction in the suit or proceeding, may compromise and settle any claim made by, on behalf of or against the Ward in such suit or proceeding.

SECTION 6-308.110

DISCHARGE AND RELEASE.

The Person making payment, delivery, transfer or issuance of Property or evidence thereof to the Person designated by such court under this Section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a Guardian of the Minor or Incapacitated or Partially Incapacitated Person, and he is not required to see to the application thereof. A Person making payment, delivery, transfer or issuance of Property, or evidence thereof, to a next friend or Guardian *Ad Litem* may be discharged and released as provided for in this Act.

SECTION 6-308.111

**ESTATE MANAGEMENT; INCOME APPLIED TO
MAINTENANCE AND SUPPORT OF WARD; SALE OF
REALTY.**

Every Guardian must Manage the Estate of his Ward frugally and without waste, and

apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the Ward, and his family, if there be any; and if such income and profits be insufficient for that purpose, the Guardian may sell the real Estate, upon obtaining an order of the Court, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the Ward and his family, if there be any.

SECTION 6-308.112

**CREDIT IN SETTLEMENT FOR MAINTENANCE AND
SUPPORT OF WARD; PAYMENT BY THIRD PERSON.**

When a Guardian has advanced for the necessary maintenance, support and education of his Ward, an amount not disproportionate to the value of the Estate or condition of life of the Ward and the same is made to appear to the satisfaction of the Court, by proper supporting documents and proofs, the Guardian must be allowed credit therefor in his settlement. Whenever a Guardian fails, Neglects, or refuses to furnish suitable and necessary maintenance, support or education for his Ward, the Court may order the Guardian to do so and enforce such order by proper process. Whenever any third Person, at the request of the Ward, supplies a Ward with such suitable and necessary maintenance, support or education which is shown to have been done after refusal or Neglect of the Guardian to supply the same, the Court may direct the Guardian to pay therefor out of the Estate of the Ward, and may enforce such payment by due process.

SECTION 6-308.113

EXECUTION OF WAIVERS OR CONTENTS FOR WARDS.

The duly appointed and acting Guardian, Limited Guardian, Conservator, attorney in fact, or any other Person legally authorized to act on behalf of any Minor or Incapacitated or partially Incapacitated heir, devisee or legatee may execute waivers or consents for his Ward as authorized by the Court. There shall be attached to each waiver or consent a certified copy of the instrument authorizing him to perform such act.

SECTION 6-308.114

**AUTHORIZATION TO INVEST THE PROCEEDS OF
SALES AND MONEY IN ESTATE.**

The Court, on the application of a Guardian or any Person interested in the Estate of any Ward, after such notice to Persons interested therein as the judge shall direct, may authorize and require the Guardian to invest the proceeds of sales, and any other of his Ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned therein; and the Court may make such other orders and give such directions as are needful for the management, investment and disposition of the Estate and effects, as circumstances require.

SECTION 6-308.115

**INVESTMENT OF MONIES BELONGING TO ESTATES;
PURCHASE OF HOMESTEADS FOR INCAPACITATED
OR PARTIALLY INCAPACITATED PERSONS.**

A. Except as may be otherwise provided by law, the money belonging to Estates of Minors and Incapacitated or Partially Incapacitated Persons, subject to the jurisdiction of the Court, can only be invested in one or more of the following:

1. real estate and first mortgages upon real Property which do not exceed fifty percent (50%) of the actual value of the Property;
2. United States bonds, or any other type of security certificate, or evidence of indebtedness which is guaranteed by the United States government, or any authorized agency thereof;
3. Chickasaw Nation bonds;
4. state bonds;
5. bonds of municipal corporations; or
6. accounts in savings and loan associations and credit unions located within the Chickasaw Nation or the State of Oklahoma, and all types of interest-bearing time deposits and certificates of banks, savings and loan associations, and credit unions located within the Chickasaw Nation or the State of Oklahoma, not to exceed the amount insured by the United States government.

B. Upon application to the Court by the Guardian of the Estate of the Incapacitated or Partially Incapacitated Person, showing to the satisfaction of the Court:

1. that the Incapacitated or Partially Incapacitated Person is vitally in need of a home;
2. that the Incapacitated or Partially Incapacitated Person owns no suitable homestead;
3. that the Incapacitated or Partially Incapacitated Person has sufficient monthly, semi-annual, or annual fixed income to retire an incurred indebtedness for the remaining unpaid cost of a homestead; and

4. that it would be in the best interest of the Incapacitated or Partially Incapacitated Person that a suitable homestead be purchased on that basis.

The Court may enter an order authorizing the Guardian to execute and deliver a note and mortgage, under such tenor and terms as the Court will approve, for the purpose of securing payment of any remaining cost of such a homestead. Any note and mortgage given by a Guardian under the provisions of this Section shall, if authorized by the Court as provided for in this Section, be endorsed "approved" by the Judge. When so authorized and endorsed, the note and mortgage shall be a binding obligation against the Ward and the Estate of the Ward until fully paid. The Ward, if subsequently restored to competency to transact business, shall be held firmly bound by the note and mortgage in the same manner and to the same extent as though the Ward had given the homestead purchase-money note and mortgage.

C. When an individual Guardian enters into an agreement with a bank or trust company, or when the Guardian is a bank or trust company qualified and acting under the supervision of the State of Oklahoma Banking Board or of the Comptroller of the Currency of the United States of America, the Guardian may, upon application to the Court, invest funds coming into its hands as Guardian in any Property, Real, Personal or mixed, in which an individual may invest the individual's own funds unless otherwise provided by law.

SECTION 6-308.116 **WHEN INCOME OF ESTATE IS INSUFFICIENT FOR MAINTENANCE.**

When the income of an Estate under Guardianship is not sufficient to maintain the Ward and his family, or to maintain and educate the Ward when a Minor, his Guardian may sell the real or Personal Estate of the Ward for that purpose, upon obtaining an order therefor.

SECTION 6-308.117 **SALE OF PROPERTY.**

When it appears to the satisfaction of the Court, upon the petition of the Guardian, that for the benefit of the Ward or the real or Personal Estate of the Ward, or some part of said Estate, should be sold, and the proceeds thereof invested, the Guardian may sell the same for such purpose upon obtaining an order therefor.

SECTION 6-308.118 **PROCEEDS OF SALE TO BE APPLIED FOR CERTAIN PURPOSES; INVESTMENT; MAINTENANCE.**

If the Property is sold for the purposes mentioned in Sections 6-308.116 and 6-308.117 of this Act, the Guardian must apply the proceeds of the sale to such purposes, as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power as provided in this Act, until the capital is needed for the maintenance of the Ward and his family,

or the education of his Children, or for the education of the Ward when a Minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been Personal Estate of the Ward.

SECTION 6-308.119 **PETITION; FACTS AND CIRCUMSTANCES.**

To obtain an order for such sale, the Guardian must present to the Court a verified petition therefor, setting forth the condition of the Estate of the Ward and the facts and circumstances on which the petition is founded.

SECTION 6-308.120 **SALE OF WARD'S PROPERTY; HEARING; NOTICE ORDER.**

If it appears to the Court, from the petition, that it is necessary or would be beneficial to the Ward or the Estate of the Ward that the real or Personal Estate, or some part of such Estate, should be sold, the Court shall thereupon make an order directing all Persons entitled to notice pursuant to Section 6-308.26 of this Act for Minors or Section 6-308.53 of this Act for Adults to appear before the Court, at a time and place therein specified in the order and notice, not less than ten (10) nor more than thirty (30) days from the time of making such order, unless notice is waived, as provided in Section 6-308.121 of this Act, to show cause why an order should not be granted for the sale of such Estate. If it appear that it is necessary or would be beneficial to the Ward to sell the Personal Estate or some part of it, the Court must order the sale to be made.

SECTION 6-308.121 **MAILING OR PUBLICATION OF ORDER; WAIVER OF NOTICE.**

The Court shall cause copies of said order to be mailed to the Persons entitled to notice of the proceeding at least ten (10) days before the hearing on the petition. If the mailing address of any such Person is unknown, a copy of the order must be published one time in some newspaper in the county of the location of said property and the hearing of said petition shall not be less than ten (10) days from the date of publication of such notice. If written consent to making the order of sale is given by all Persons entitled to notice, except the Ward if the Ward has been adjudicated to be fully Incapacitated, said order of sale may be made at once without giving the notice.

SECTION 6-308.122 **HEARING PETITION UPON ORDER.**

The Court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear the petition and examine the proofs and allegations of the petitioner and any objections made by Persons entitled to notice of the proceeding.

SECTION 6-308.123 **PARTITION OF REAL ESTATE.**

The Guardian may join in and assent to a partition of the real estate of the Ward with the written approval of the Court, whenever such assent may be given by any Person.

SECTION 6-308.124 **PERSONAL REPRESENTATIVES MAY SELL OIL, GAS AND MINING LEASES.**

Personal representatives including but not limited to Guardians of the Property, Guardians of Minors or of Incapacitated or Partially Incapacitated Persons are hereby authorized and empowered to sell and execute oil and gas or other mining leases upon the lands belonging to the Estates of such deceased Persons or of such Minors or Incapacitated or Partially Incapacitated Persons in consideration of a royalty or part or portion of the production thereof where such consideration is money.

SECTION 6-308.125 **GUARDIAN MAY BE EXAMINED; WITNESSES.**

At the hearing on the petition the Guardian may be examined on oath, witnesses may be produced and examined, and process to compel the attendance and testimony of witnesses may be issued by the Court.

SECTION 6-308.126 **AWARD OF COSTS TO PREVAILING PARTY ON OBJECTION.**

If any Person entitled to notice of the proceeding enters an objection to the requests made in the petition, the Court may, in granting or refusing the order requested by the petition, award costs to the prevailing Party, and enforce the payment thereof.

SECTION 6-308.127 **ORDER FOR SALE EITHER PUBLIC OR PRIVATE.**

If, after a full examination, it appears necessary or for the benefit of the Ward that the real or Personal Estate of the Ward, or some part thereof, should be sold, the Court may grant an order therefor, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale.

SECTION 6-308.128 **SALE BOND BY GUARDIAN.**

Every Guardian authorized to sell real estate shall, before the sale, give bond to the Chickasaw Nation, with sufficient surety to be approved by the Court, with condition to sell the same in the manner and to account for the proceeds of the sale as provided for in this Act. The

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Court may order that such bond is not required if the Court specifically finds that the general bond, if any, of the Guardian is of a sufficient penal amount to provide for the proceeds of the sale in addition to the Property secured by said bond or upon a finding by the Court that:

1. the anticipated annual income to a Ward for one (1) year plus the value of the Personal Property of the Ward, after sale, is less than forty thousand dollars (\$40,000); and
2. the Guardian of the Ward is either a Parent, spouse, Brother, Sister, Grandparent, Child or grandchild of the Ward.

SECTION 6-308.129

SALES GOVERNED BY SAME LAW AS IN ESTATES OF DECEDENTS.

Except as otherwise specifically provided by this Act, all the proceedings pursuant to petitions of Guardians for sales of Property of their Wards, giving notice and the hearing of such petitions, granting and refusing an order of sale, directing the sale to be made at public or private sale, reselling the same Property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders, rejecting or confirming sales and reports of sales and ordering and making conveyances of Property sold shall be had and made as provided and required by the provisions of law concerning the Estates of decedents.

SECTION 6-308.130

TIME EXPIRATION ON ORDER OF SALE.

No order of sale granted pursuant to Sections 6-308.116 through 6-308.135 of this Act continues in force more than one (1) year after granting the same, without a sale being had.

SECTION 6-308.131

TERMS OF SALE; SECURITY.

All sales of real estate of Wards must be for cash, or for part cash and part deferred payments not to exceed ten (10) years, bearing interest from date of sale as, in the discretion of the Court, is most beneficial to the Ward. A Guardian making a sale of real Property shall demand and receive from the purchasers a note and mortgage on the real estate sold, with such additional security, if any, as the Court deems necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

SECTION 6-308.132

TIME LIMITATION OF ACTION FOR RECOVERY OF ESTATE SOLD; DISABILITY AND REMOVAL THEREOF.

No action for the recovery of any Estate sold by a Guardian can be maintained by the Ward, or by any Person claiming under him, unless it is commenced within three (3) years

immediately following the termination of the Guardianship or, when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three (3) years immediately following the removal of such disability.

SECTION 6-308.133

**EXCHANGE OF PROPERTY HELD BY WARD OR WARDS
IN COMMON; NOTICE.**

When it shall appear to the Court to be to the advantage or best interests of the Ward, or Wards, to exchange an interest in real estate held by such Ward or Wards in common with another, or others, for other real estate also held in common by such Ward or Wards with another or others, to be owned solely by said Ward or Wards, after such exchange, a Guardian of the Ward's Estate may be authorized by the Court, after hearing and appraisal, to effectuate such exchange and to give or accept cash in part consideration. The provisions of Section 6-308.121 of this Act governing the giving of notice of hearing of a petition for an order to sell, and appraisal, shall apply and govern an order authorizing an exchange of real estate of a Ward or Wards by his Guardian.

SECTION 6-308.134

**PERISHABLE PROPERTY SALE; REPORT;
DETERMINATION OF PERISHABILITY.**

A. Notwithstanding any other provision contained in this Act, a Guardian or Limited Guardian of the Property of a Ward may sell, at public auction or private sale, without obtaining prior Court authorization for sale, without filing a return of sale, and without obtaining Court confirmation of sale, any Personal Property of the Ward which is perishable, is otherwise likely to depreciate in value, or would cause the Estate of the Ward to incur loss or expense if kept. Title to such Property shall pass to the purchaser thereof without approval of or confirmation by the Court of such sale.

B. With respect to a Limited Guardian of the Property, this Section shall apply only to Property of the Ward which is subject to such Limited Guardian's control pursuant to a dispositional order.

C. Any sale of Property made by a Guardian or Limited Guardian of the Property of a Ward pursuant to this Section shall be reported in the accounting next filed by such Guardian or Limited Guardian after the making of the sale. If the Court determines the Property sold was not perishable or was not otherwise likely to depreciate in value and would not have caused the Estate of the Ward to incur loss or expense if kept, the Guardian or Limited Guardian who made such sale shall not be Surcharged or otherwise held liable with respect to such sale if he made a reasonable determination in good faith that the Property sold was perishable, was otherwise likely to depreciate in value, or would have caused the Estate of the Ward to incur loss or expense if kept.

SECTION 6-308.135

LEGALIZATION OF FORMER LEASES.

All such leases and grants of mineral oil and gas heretofore made and confirmed by the Court, in consideration of a royalty, part or portion of the production thereof, are hereby legalized.

SECTION 6-308.136

CAUSES FOR REMOVAL OF GUARDIANS.

A Guardian may be removed by the Court for any of the following causes:

1. for abuse of his fiduciary responsibility;
2. for continued failure to perform his duties;
3. for incapacity to perform his duties;
4. for gross immorality;
5. for having an interest adverse to the faithful performance of his duties;
6. if the instrument in which the Person was nominated as Guardian is judicially determined to be invalid;
7. in the case of Guardian of the Property, for insolvency; and
8. when it is no longer proper that the Ward should be under Guardianship.

SECTION 6-308.137

POWER OF GUARDIAN SUSPENSION UPON CERTAIN FACTORS; EFFECT OF MARRIAGE OF INCAPACITATED OR PARTIALLY INCAPACITATED PERSON.

- A. The power of a Guardian is suspended only:
1. by order of the Court;
 2. if the appointment was made solely because of the Ward's minority, by his obtaining majority; or
 3. the Guardianship over the Person only of a Minor Ward, by the marriage of the Ward.

B. Whenever a Person who has been found by the Court to be an Incapacitated or Partially Incapacitated Person marries, the Court may, upon application of an interested Person, hold a review hearing to determine whether:

1. the Guardianship should be terminated;
2. a successor Guardian should be appointed;
3. the limitations on the Ward, or the powers and duties of the Guardian; or
4. the Guardianship should be continued unchanged.

SECTION 6-308.138

REMOVAL OR RESIGNATION OF GUARDIAN.

A. The authority and responsibility of a Guardian terminates upon the death of the Guardian, Conservator, or the Ward, the determination of incapacity of the Guardian or Conservator, or upon removal or resignation of the Guardian or Conservator. Termination does not affect the liability of a Guardian or Conservator for prior acts or the obligation to account for any funds and assets of the Ward under the control of the Guardian or Conservator. The authority and responsibility of a Guardian of a Minor also terminates upon the marriage or majority of the Ward.

B. The Court, after notice and hearing, may remove a Guardian or Conservator for cause if the Guardian or Conservator has failed for thirty (30) days, after he is required to do so, to render an account or make a report, and compel him to surrender the Estate of the Ward to the Person found to be lawfully entitled thereto.

C. Every Guardian or Conservator may resign when it appears proper to allow the same and upon the resignation or removal of a Guardian or Conservator the Court may appoint a successor Guardian or Conservator in the place of the Guardian or Conservator who has resigned or has been removed or make other appropriate orders pursuant to the provisions of this Act.

D. Upon termination of the disability of the Ward or upon his death, or upon the resignation or removal of the Guardian or Conservator, a Guardian or Conservator or the Guardian's or Conservator's Personal representative, or if the Guardian or Conservator is Incapacitated or deceased and there is no Personal representative, then some suitable Person appointed by the Court shall file the Guardian's or Conservator's final account and request for final compensation with the Court within thirty (30) days after such event.

1. The Court shall set the final account for hearing on a date not less than

fifteen (15) days after the filing thereof. Notice of such hearing shall be given at least ten (10) days prior to the date set for hearing, by mailing a copy of the notice of hearing by first-class mail:

a. if the Guardianship was established for a Minor or a Minor's Estate, to the Persons entitled to notice pursuant to Section 6-308.26 of this Act if the Ward is still a Minor, or to the Ward only if the Ward has attained majority or has married, or if the Ward is deceased, to the Persons entitled to notice pursuant to Section 6-308.26 of this Act and to the personal representative of the Ward's Estate if such representative has been appointed and the representative's appointment is known to or ascertainable by reasonably diligent efforts of the Person rendering the final account; or

b. if the Guardianship was established for an Adult or an Adult's Estate, or if the proceeding is a Conservatorship action, to those Persons entitled to notice pursuant to Paragraph 1, unless the Ward is deceased, and Paragraphs 2, 3 and 7 of Subsection A of Section 6-308.53 of this Act and, if the Ward is deceased, to the personal representative of the Ward's Estate if such representative has been appointed and the representative's appointment is known to or ascertainable by reasonably diligent efforts of the Person rendering the final account.

2. Any Person to whom notice is given in accordance with this Subsection may appear at the hearing on the final account and file his exceptions in writing to the final account and contest the same.

3. The settlement of the account and the allowance thereof by the Court shall be conclusive against all Persons interested in the Estate of the Ward, except as to Persons subject to a legal disability at the time the notice of hearing is given.

4. Upon approval of the final account, the Guardian or Conservator and his sureties, if any, shall be discharged.

SECTION 6-308.139

DISCHARGE OF UNNECESSARY GUARDIANSHIP.

The Guardian of an Incapacitated or Partially Incapacitated Person or Minor may be discharged by the Court when it appears to the Court, on the application of the Ward or otherwise, that the Guardianship is no longer necessary.

SECTION 6-308.140

**DISTRIBUTION OF PERSONAL PROPERTY OF
INTESTATE WARD.**

When an Adult Ward shall die intestate leaving any Real or Personal Property, the Guardian shall file with the Court an application for final accounting and discharge of guardian. The Court shall then enter the estate of the deceased ward in a court having jurisdiction over the probate of such deceased person.

SECTION 6-308.141

**CIVIL LIABILITY OF GUARDIANS OR PETITIONERS;
DAMAGES; WILLFUL OR MALICIOUS FILING OF
FALSE PETITION OR APPLICATION.**

A. Any Guardian who willfully violates the duties or willfully misuses the powers assigned by the Court and thereby causes injury to the Ward or damages to the financial resources of the Ward shall, in addition to any criminal penalties, be liable in a civil action for any actual damages suffered by the Ward. Nothing in this Subsection A shall limit the authority of the Court to Surcharge a Guardian as otherwise provided by law.

B. Any Person who willfully or maliciously files a false petition or application pursuant to the provisions of this Act or a petition or application without a reasonable basis in fact for such a petition pursuant to the provisions of this Act shall be liable in a civil suit for any actual damages suffered by the subject of the petition or application.

SECTION 6-308.142

CONCEALMENT OR EMBEZZLEMENT CITATION.

Upon complaint made to the Court by any Guardian, Ward, creditor, or other Person interested in the Estate, or having a prospective interest therein as heir or otherwise, against anyone suspected of having concealed, or conveyed away any of the money, goods or effects, or an instrument in writing, belonging to the Ward or to his Estate, the Court may require such suspected Person to appear before the Court, and may examine and proceed with such Person on such charge in the manner provided by law with respect to Persons suspected of, and charged with, concealing or embezzling the effects of a decedent.

SECTION 6-308.143

**REPORT OF ABUSE OF INCAPACITATED PERSON OR
MINOR; FAILURE TO REPORT; IMMUNITY FROM
LIABILITY; FALSE REPORT.**

A. Any Person having reasonable cause to believe that an Incapacitated Person, a Partially Incapacitated Person, or a Minor is suffering from Abuse, Neglect, or Exploitation shall make a report to the Chickasaw Nation Indian Child Welfare Department, the office of the Court

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Advocate or the Bureau of Indian Affairs police department as soon as such Person is aware of the situation.

B. Any Person who knowingly and willfully fails to promptly report any Abuse, Neglect, or Exploitation as required by the provisions of Subsection A above, upon conviction, shall be guilty of a misdemeanor.

C. Any Person participating in good faith and exercising due care in the making of a report pursuant to the provisions of this Section shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

D. Any Person who willfully or recklessly makes a false report or a report without a reasonable basis in fact for such a report pursuant to the provisions of this Section shall be civilly liable for any actual damages suffered by the Person or Persons being reported and for any punitive damages set by the Court or jury which may be allowed in the discretion of the Court or jury.

E. No employer shall terminate the employment, prevent or impair the practice or occupation of, or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the provisions of this Section. The Court, in addition to other damages and remedies, may assess reasonable attorney fees against an employer who has been found to have violated the provisions of this Subsection E.

**ARTICLE I
RIGHTS OF MAJORITY**

- Section 6-309.1 Procedure to Confer Rights of Majority; Petition; Jurisdiction and Venue; Decree.
- Section 6-309.2 Procedure to Confer Rights of Majority; Decree.
- Section 6-309.3 Notice of Hearing; Certified Mail and by Publication in Newspaper.

SECTION 6-309.1 **PROCEDURE TO CONFER RIGHTS OF MAJORITY;
PETITION; JURISDICTION AND VENUE; DECREE.**

The District Court shall have authority to confer upon minors the rights of majority concerning contracts, and to authorize and empower any person, under the age of eighteen (18) years, to transact business in general, or any business specified, with the same effect as if such act or thing were done by a person above that age; and every act done by a person so authorized shall have the same force and effect in law as if done by persons at the age of majority.

SECTION 6-309.2 **PROCEDURE TO CONFER RIGHTS OF MAJORITY;
DECREE.**

Any minor desiring to obtain the rights of majority for the purposes named in Section 6-309.1 may, by his next friend, file a verified petition in the District Court setting forth the age of the minor petitioner and that said petitioner is then and has been a bona fide resident within the jurisdiction of the Chickasaw Nation for at least one (1) year next before the filing of the petition, and the cause for which the petitioner seeks to obtain the rights of majority. The petition should state whether or not the parents of the minor are living, and if living, their names and addresses; whether or not a guardian has been appointed for the minor and, if a guardian has been appointed, the guardian's name and address; who has legal custody of the minor and, if the person having legal custody is not a parent or the guardian, the name and address of the person who has custody. The District Court, being satisfied that the said petitioner is a person of sound mind and able to transact his affairs and that the interests of the petitioner will be thereby promoted, may, in its discretion, order and decree that the petitioner be empowered to exercise the rights of majority.

SECTION 6-309.3 **NOTICE OF HEARING; CERTIFIED MAIL AND BY
PUBLICATION IN NEWSPAPER.**

When the petition defined in Section 6-309.2 is filed, the Court shall fix a day for the hearing thereof. Notice of the hearing and a copy of the petition shall be sent by certified mail, return receipt requested, delivery restricted to addressee only, to the parents of the minor, if living, to the guardian of the minor, if one has been appointed, or to the person who has custody

of the minor if such person is other than parent or guardian of the minor, and if both of the minor's parents are dead, the Court may order that notice be sent by certified mail, return receipt requested, delivery restricted to addressee only, to other relatives of the minor; provided, however, that no notice shall be sent to a person who endorses on the petition that notice of the day of the hearing is waived. Notice of the hearing shall also be given by publication in some newspaper printed in the county of the State of Oklahoma where the petitioner resides at least ten (10) days prior to the day set for the hearing. Before the Court may enter an order conferring majority rights in the hearing provided for herein, proof must be presented to the Court at said hearing that notice was given to all persons entitled thereto and that notice was published as provided herein.

**CHAPTER 4
ELDERLY**

(RESERVED)

**CHAPTER 5
DECEDENT'S ESTATES AND TRUSTS**

(RESERVED)